# COLLECTION OF STATUTES

CONNECTED WITH THE

## General Administration of the Law;

*ARRANGED ACCORDING TO THE ORDER OF SUBJECTS:*

WITH

## NOTES,

BY SIR WILLIAM DAVID EVANS, KNT.
LATE RECORDER OF BOMBAY.

THE SECOND EDITION, CORRECTED;
COLLATED WITH THE ORIGINAL STATUTES,
AND CONTINUED TO THE
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BY ANTHONY HAMMOND,
OF THE INNER TEMPLE, ESQ.

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## CLASS I.

### *General Courts of Common Law, Court Houses, Judges.*

[ No. I. ] MAGNA CHARTA.—9 Henry 3. c. 11.—Common Pleas shall not follow the King's Court. No. I. 9 Henry III. c. 11.

COMMON PLEAS shall not follow our Court, but shall be holden in some place certain.'

No. II.
3 Edward I. c. 46.

[ No. II. ] 3 Edward I. (1 Westminster) c. 46.—One Plea shall be decided by the Justices before another commenced.

'IT is provided also, and commanded by the King, That the Justices of the King's Bench, and of the Bench at *Westminster*, from henceforth shall decide all pleas determinable at one day, before any matter be arraigned, or plea commenced the day following, saving that their essoigns shall be entered, judged, and allowed; yet, by reason hereof, let none presume to absent himself at the day to him limited.'

[ No. III. ] 6 Edward I. (Gloucester) c. 8.—No Suit for Goods in the King's Courts under forty shillings. Attorneys may be made where an Appeal lieth not. The Defendant being essoigned shall bring in his Warrant.

6 Edward I. c. 8.

'IT is provided also, That sheriffs shall plead Pleas of Trespass in their counties, as they have been accustomed to be pleaded. And that none from henceforth shall have writs of trespass before Justices, unless he swear by his faith that the goods taken away were worth forty shillings (1) at the least. And if he complain of beating, he shall answer by his faith, that his plaint is true. Touching wounds and maims, a man shall have his writ as before hath been used; and it is agreed that the defendants in such pleas may make their attornies, where appeal lieth not; so that if they be attainted, being absent, then the sheriff shall be commanded to take them, and shall have like pain as they should have had, if they had been present at the judgment given. And if the plaintiffs from henceforth in such trespasses cause themselves to be essoigned after the first appearance, day shall be given them unto the coming of the Justices in Eyre, and the defendants in the mean time shall be in peace. In such pleas and other, whereas attachments and distresses do lie, if the defendant essoign himself of the King's service, and do not bring his warrant at the day given him by the essoign, he shall recompense the plaintiff damages for his journey twenty shillings, or more, after the discretion of the Justices, and shall be grievously amerced unto the King.'

(1) If it appear to a superior Court that the debt sued for is under forty shillings, they will, on motion, stay the proceedings before trial: Kennard v. Jones, 4 T. R. 495; and proceedings were accordingly stayed, it being sworn by the defendant, and not denied by the plaintiff, that the debt was under forty shillings: Wellington v. Arters, 5 T. R. 64. But no action can be brought in the county, or other inferior court, unless the cause of action arise, and the defendant reside (or at least is served with process) within the jurisdiction of such court; and if that be not the case, or if for other cause the plaintiff cannot sue in an inferior court, he may sue in a superior court for a debt under forty shillings: Welsh v. Troyte, 2 H. B. 29. Tubb v. Woodward, 6 T. R. 175. Smith v. O'Kelly, 1 B. & P. 75. Busby v. Fearon, 8 T. R. 235.

It is obvious that at the time when the distinction was made, as to the amount of the demand for which jurisdiction was given to the county and other inferior courts, such amount was of very considerable relative importance, and that by the change which has since taken place it has become absolutely insignificant; so that in the majority of the cases that are brought before the superior courts, the original object in dispute is a matter of very small importance in comparison to the expense of litigation; and, consequently, the dread and apprehension of such expense is equivalent to a failure of justice. The inconvenience of this state of things has been long felt and acknowledged, and different proposals have been made for removing it. As the attention of the Editor has been very particularly directed to this subject, an article is intended to be devoted to it in the Appendix.—(*omitted in this edition.*)

[ No. IV. ] 13 Edward I. st. 1. c. 30.—The Authority of Justices of *Nisi Prius*. Adjournment of Suits. Cer-

tain Writs that be determinable in their proper Counties. A Jury may give their Verdict at large. None but which were summoned shall be put in Assises or Juries.

No. IV.
13 Edward I. st. 1. c. 30.

'FROM henceforth two Justices sworn shall be assigned, before whom, and none other, assizes of *Novel disseisin*, *Mortdauncestor*, and *Attaints* shall be taken, and they shall associate unto them one or two of the discreetest knights of the shire into which they shall come; and shall take the foresaid Assises and Attaints but thrice in the year at the most, that is to say, first between the *Quinzime* of Saint *John Baptist*, and the *Gule* of *August*: and the second time between the Feast of the Exaltation of the Holy Cross, and the *Utas* of Saint *Michael*; and the third time, between the Feast of the *Epiphany*, and the Feast of the Purification of the Blessed *Mary*. And in every shire, at every taking of Assises before their departure, they shall appoint the day of their return, so that every one of the shire may know of their coming, and shall adjourn the Assises from Term to Term, if the taking of them be deferred at any day by vouching to warranty, by essoign, or by default of jurors. And if they see that it be profitable for any cause that Assises of *Mortdauncestor*, being respited by essoign or voucher, ought to be adjourned into the Bench, it shall be lawful for them to do it, and then they shall send the record with the original writ before the Justices of the Bench; and when the matter is come to the taking of the Assise, the Justices of the Bench shall remit the matter to the former Justices before whom the Assise shall be taken. But from henceforth the Justices of the Bench in such Assises shall give four days at the least in the year before the said Justices assigned, for to spare expense and labour. Inquisitions of trespass shall be determined before the Justices of both Benches, except the trespass be so heinous that it shall require great examination. Inquisitions also of other pleas pleaded in either of the Benches, shall be determined before them, wherein small examination is required, as when the entry or seisin of any is denied, or in case when one article is to be inquired. But inquisitions of many and great articles, the which require great examination, shall be taken before the Justices of the Bench, except that both parties desire that the inquisition may be taken afore some of the associates when they do come into those parts; so that from henceforth it shall not be done but by two Justices, or one with some knight of the shire, upon whom the parties can agree. And such inquisition shall not be determined by any Justices of the Bench, unless a day and a place certain be appointed in the shire, in presence of the parties, and the day and place shall be mentioned in a writ judicial by these words:—Præcipimus tibi quod venire facias coram justiciariis nostris apud Westmonasterium in octabis sancti Michaelis, nisi talis et talis tali die et loco ad partes illas venerint, duodecim, &c.

Who shall be Justices of Nisi Prius.

Adjournment of Assises.

Inquisitions of trespass.

The writ of Nisi Prius.

Assises of darrein presentment and quare impedit shall be ended in their proper counties.

'II. And when such inquests be taken, they shall be returned into the Bench, and there shall judgment be given, and there they shall be inrolled. And if any inquisitions be taken otherwise than after this form, they shall be of no effect, except that an Assise of *Darrein presentment*, and inquisitions of *Quare impedit* shall be determined in their own shire, before one Justice of the Bench and one Knight, at a day and place certain in the Bench assigned, whether the defendant consent or not, and there the judgment shall be given immediately. All Justices of the Benches from henceforth shall have in their circuits clerks to inroll all pleas pleaded before them, like as they have used to have in time passed. And also it is ordained, That the Justices assigned to take Assises shall not compel the jurors to say precisely whether it be disseisin or not, so that they do shew the truth of the deed, and require aid of the Justices. But if they of their own head will say that it is disseisin, their verdict shall be admitted at their own peril. And from henceforth the Justices shall not put in Assises or juries any other than those that were summoned to the same at the first.'

Clerks of Assise.

A Jury may give their verdict at large.

None shall be put in juries but such as were summoned.

No. V.
27 Edward I. st. 1. c. 4.

## [ No. V. ] 27 Edward I. st. 1. c. 4.—*Nisi Prius* shall be granted before one of the Justices of the Court where the suit is commenced.

"ALSO where we have provided that none shall be impanelled any "where out of the shire where he is dwelling, in recognisances, "enquests and juries, that have less than an hundred shillings of land, "whereby as well they as others who have more lands, by too often "appearing as well in our Exchequer as before our Justices of either "Bench, are much impoverished:"

'II. We therefore, considering the intolerable damage of our people, 'not only for the discharge of such jurors, but also for the more speedy 'ministration of justice to all parties suing in our Court, have provided 'and ordained, that enquests and recognisances determinable before 'Justices of either Bench, from henceforth shall be taken in time of 'vacation before any of the Justices before whom the plea is brought, 'being associate with one knight of the same shire where such enquests 'shall pass, unless it be an enquest that requireth great examination. 'And so from henceforth in taking such enquests, the Justices shall do 'as to them shall seem most expedient for the common utility of our 'realm, notwithstanding the statute lately made at *Westminster* upon 'the taking of such enquests, containing, that if any enquests be taken 'contrary to the form of the said statute, they should be of none effect.'

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## [ No. V. a. ] 28 Edward I. stat. 3. c. 4.—Common Pleas shall not be holden in the Exchequer.

28 Edward I. stat. 3. c. 4.

'MOREOVER no Common Pleas shall be from henceforth holden in 'the Exchequer, contrary to the form of the Great Charter.'

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## [ No. VI. ] 28 Edward I. stat. 3. c. 5.—The Chancellor and the Justices of the King's Bench shall follow the King.

28 Edward I. stat. 3. c. 5.

'AND on the other party, the King will, that the Chancellor and the 'Justices of his Bench shall follow him, so that he may have at all 'times near unto him some sages of the law, which be able duly to 'order all such matters as shall come unto the Court at all times, when 'need shall require.'

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## [ No. VII. ] 12 Edward II. stat. 1. c. 3.—Inquests and Juries touching Plea of Land shall be taken by *Nisi Prius*.

12 Edward II. st. 1. c. 3.
13 Ed. 1. st. 1. c. 30.
27 Ed. 1. st. 1. c. 4.

"AND where it is contained in a Statute made at *Westminster* the "second day of *April*, in the twenty-seventh year of the reign of "the King's Father that now is, that Inquests and Recognisances taken "before Justices of the one Bench and of the other, should be taken "before any Justice of the places accompanied with some Knight of "the Shire where such Inquests hap to be taken, if they have not "need of great examination; and that in such Inquests the Justices "shall do as they think most expedient for the wealth of the Realm, "the which Statute needeth to be better declared;" 'it is agreed, That 'Inquests and Juries that be and shall be taken in pleas of land, that 'require not great examination, shall be taken in the Country before a 'Justice of the place where the plea is, accompanied with a substantial 'man of the country, Knight, or other, so that a certain day be given 'in the Bench, and a certain day and place in the Country, in the pre-'sence of the parties, if the demandant request it. And also the In-

See 14 Ed. III. st. 1. c. 16. before what persons Nisi Prius may be granted.

'quests and Juries, in pleas of land that require great examination, 'shall be taken in the Country (in the manner abovesaid) before two 'Justices of the Bench.'

No. VII. 12 Edw. II. st. 1. c. 3.

## [ No. VIII. ] 12 Edward II. stat. 1. c. 4.—Justices of *Nisi Prius* shall record Nonsuits, Defaults, &c.

'AND the Justices or Justice shall have power to record Nonsuits 'and Defaults in the Country, at the days and places assigned, as 'afore is said. And that which they shall have done in the things above 'mentioned, shall be reported in the Bench at a day certain, there to 'be inrolled, and thereupon judgment shall be given. And the King 'intendeth not, that the said Inquests and Juries should not be taken in 'the Bench if they come, nor that this Statute should extend unto great 'Assizes. And also one Justice of the one place and of the other, 'being associate with a discreet man of the country, Knight, or other, 'at the request of the plaintiff, shall take Inquests upon pleas pleaded 'and to be pleaded, that be moved by attachment and distress, and shall 'have power to record Nonsuits as above is said, and to take Inquests 'upon defaults there made. And as to the Inquests to be taken upon 'Writs of *Quare impedit*, it shall be done as is contained in the Statute 'of *Westminster* the Second; and the Justices shall have power to re-'cord Nonsuits and Defaults in the Country, and to give judgment 'thereupon, as they do in the Bench, and there to report that which 'they have done, and there to be inrolled. And if it happen, that the 'Justice or Justices that shall be assigned to take such Inquests in the 'Country, do not come, or if they come into the country at the day 'assigned, yet the parties and persons of such Inquests shall keep their 'day in the Bench.'

12 Edward II. stat. 1. c. 4.

By 14 Ed. III. st. 1. c. 16. Justices of Assise may give judgment in Quare impedit, &c.

## [ No. IX. ] 2 Edward III. c. 2.—In what Cases only Pardon of Felony shall be granted. Who shall be Justices of Assise, &c.

"ITEM, Whereas Offenders have been greatly encouraged, because "the Charters of Pardon have been so easily granted in times past, "of Manslaughters, Robberies, Felonies, and other Trespasses against "the Peace;" 'it is ordained and enacted, That such Charter shall not 'be granted, but only where the King may do it by his oath, that is to 'say, where a man slayeth another in his own defence, or by misfortune. 'And also they have been encouraged, because that the Justices of 'Gaol-delivery, and of Oyer and Terminer, have been procured by great 'men against the form of the Statute made in the twenty-seventh year 'of the reign of King EDWARD, grandfather to our Lord the King that 'now is, wherein is contained, that Justices assigned to take Assises, if 'they be laymen, shall make deliverance; and if the one be a clerk, 'and the other a layman, that the Layjudge, with another of the coun-'try associate to him, shall deliver the Gaols: Wherefore it is enacted, 'That such Justices shall not be made against the form of the said 'Statute; and that the Assises, Attaints, and Certifications be taken be-'fore the Justices commonly assigned, which should be good men and 'lawful, having knowledge of the law, and none other, after the form 'of another statute made in the time of the said King EDWARD the 'First. And that the Oyers and Terminers shall not be granted but 'before Justices of the one Bench or the other, or the Justices Errants, 'and that for great hurt, or horrible trespasses, and of the King's spe-'cial grace, after the form of the Statute thereof ordained in time 'of the said grandfather, and none otherwise.'

2 Edward III. c. 2.

Who shall be Justices of Assise and Gaol Delivery.

To whom Oyers and Terminers shall be granted, and for what cause.

No. X.
2 Edw. III.
c. 11.

[ No. X. ] 2 Edward III. c. 11.—The common Bench shall not be removed without Warning by Adjournment.

"ITEM, Whereas by removing of the common Bench, the Pleas have "oftentimes abiden without day, to the great Hurt and Peril of "Disherison of Divers;" 'it is enacted, That from henceforth the Justices before that the common Bench be removed, shall be warned by a 'time, so that they may adjourn the parties by such time that they shall 'not lose their process.'

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[ No. XI. ] 4 Edward III. c. 2.—The Authority of Justices of Assise, Gaol-delivery, and of the Peace.

4 Edward III.
c. 2.

'ITEM it is ordained, That good and discreet persons, other than of 'the places, if they may be found sufficient, shall be assigned in all 'the Shires of *England*, to take Assises, Juries, and Certifications, and 'to deliver the Gaols; and that the said Justices shall take the Assises, 'Juries, and Certifications, and deliver the Gaols, at the least three 'times a year, and more often, if need be. Also there shall be assigned 'good and lawful men in every County to keep the peace. And at the 'time of the assignments, mention shall be made that such as shall be 'indicted or taken by the said Keepers of the Peace, shall not be let to 'Mainprise by the Sheriffs, nor by none other Ministers, if they be not 'mainpernable by the Law; nor that such as shall be indicted, shall not 'be delivered but at the common law. And the Justices assigned to 'deliver the Gaols shall have power to deliver the same Gaols of those 'that shall be indicted before the Keepers of the Peace; and that the 'said Keepers shall send their indictments before the Justices, and they 'shall have power to enquire of Sheriffs, Gaolers, and other, in whose 'Ward such indicted person shall be, if they make deliverance, or let 'to mainprise any so indicted, which be not mainpernable, and to punish the said Sheriffs, Gaolers, and others, if they do any thing against 'this Act.'

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[ No. XII. ] 9 Edward III. stat. 1. c. 5.—Which Justices shall send their Records and Process determined in the Exchequer.

9 Edward III.
st. 1. c. 5.

'ITEM, At the Request of the Commons, our Lord the King by the 'said assent hath ordained and established, That Justices of Assises, 'Gaol Delivery, and of *Oyer* and *Terminer*, shall send all their Records 'and Processes determined and put in execution, to the Exchequer 'at *Michaelmas*, every year once to be delivered there; and the Treasurer and Chamberlains, which for the time shall be, having the sight 'of the Commissions of such Justices, shall receive the same Records 'and Processes of the said Justices under their seals, and keep them in 'the Treasury, as the manner is; so that the Justices always do first 'take out the Estreats of the said Records and Processes against them, 'to send to the Exchequer, as they were wont before.'

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[ No. XIII. ] 14 Edward III. stat. 1. c. 16.—Before what Persons *Nisi Prius* may be granted.

14 Edward III.
st. 1. c. 16.

"ITEM, Whereas before this time it was established, That the Inquests and Juries which be to be taken, as well of the King's "Bench as of the Common Bench, should be taken before one or more "Justices of the same place, as it is contained in the said Establishment; "and now it is notoriously seen and known, that divers Inquests and "Juries have been taken, and yet be in divers Counties of *England*,

No. XIII. 14 Edw. III. st. 1. c. 16.

"where no Justice did come, to the great Mischief of the Parties that "do sue, and also of the good People of the Country which be impa-"nelled;" 'Wherefore it is assented and established, That whoso demandeth the *Nisi Prius* in the King's Bench, as well at the suit of the Defendant, as of the Plaintiff (as before this time hath been done by the form of the Statute) the *Nisi Prius* shall be granted before any Justice of the place where the plea dependeth, if any of the same place may well go into those parts; and if not, then the *Nisi Prius* shall be granted before any Justice of the Common Bench, at a certain day, which may be accorded, and to deliver or send the tenor of the Record to him under the seal of the Chief Justice of the place, at which day he shall take the Inquest, and return the Verdict under his seal with the Writ, the Tenor, and the Panel, which shall be received in the King's Bench, and there enrolled, and thereupon judgment given according to the Verdict of the same Inquest. And the said Justice of the Common Bench shall have power to record Defaults and Nonsuits, as far forth as if the *Nisi Prius* had been granted before any Justice of the King's Bench; after which Defaults so recorded and returned in the King's Bench, the Justices shall go to give Judgment upon the same Record. And in the same manner be it done of all the Pleas which be or shall be in the Common Bench, whereof the Inquests and Juries be or shall be taken in the Country by *Nisi Prius*. And if none of the Justices of the same place go, the *Nisi Prius* shall be granted before any Justice of the King's Bench, to do as afore is said of the Justices of the Common Bench; and the tenor of the Record shall be sent to the same Justice, that he may have like power as afore is said of the Justices of the Common Bench, which be assigned to take Inquests and Juries of the King's Bench. And if it happen that none of the Justices of the one Bench nor the other may come into the Country where Inquests or Juries be to be taken, then the *Nisi Prius* shall be granted before the Chief Baron of the Exchequer, if he be a man of the law, and he shall have such power as the Justices of the one Bench and the other have by this Statute. And in case that none of the Justices of the one Bench nor the other, nor the Chief Baron of the Exchequer, being a man of the law, do not come into the Country where the Inquests and Juries be or shall be taken by the *Nisi Prius*, then the *Nisi Prius* shall be granted before the Justices assigned to take Assises in those parts; so always that one of the said Justices assigned be Justice of the one Bench or the other, or the King's Serjeant sworn: And the same Justices shall have such power as afore is said of the Justices of the one Bench and of the other. And if the one party demand the tenor of the Record to have with him, to deliver to the Justices before whom the *Nisi Prius* is granted, for to eschew that no fraud or damage to be done to the other party, nor to the people of the Inquests, another tenor of the same Record shall be delivered to the other party, if he the same require. And whereas it hath been another time established, that the Justices before whom the *Nisi Prius* hath been granted in Pleas of Assises, of *Darrein presentment*, and *Quare impedit*, should have power to give the judgments in the Country upon the Verdicts of Assise, and of Inquests, and upon Nonsuits and Defaults; it is assented, That the Justices of the one Bench and of the other, the Chief Baron of the Exchequer, and the Justices assigned, before whom the *Nisi Prius* is granted by this Statute, shall have power to give judgments in the Country, and return the same according as it is contained in the Statute of *York* thereupon made.'

Nisi Prius may be granted before a Justice of another Court, than where the suit dependeth.

Justices of Assise may give Judgment upon Assise, Quare impedit and Darrein presentment.

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## [ No. XIV. ] The Oath of the Justices, being made Anno 18 Edw. III. stat. 4. and Anno Dom. 1344.

18 Edward III. stat. 4.

'YE shall swear, That well and lawfully ye shall serve our Lord the King and his people in the office of Justice, and that lawfully ye

No. XIV. 18 Edw. III. stat. 4.

Justices of both Benches shall serve the King in their office.

To warn the King of any damage.

To do justice.

To take no reward of any having a suit.

To give no Counsel where the King is a party.

To maintain no suit.

Not to deny right for letters.

To procure the King's profit.

The penalty of an offender.

'shall counsel the King in his business, and that ye shall not counsel nor assent to any thing which may turn him in damage or disherison by any manner, way, or court. And that ye shall not know the damage or disherison of him, whereof ye shall not cause him to be warned by yourself, or by other; and that ye shall do equal Law, and execution of right, to all his subjects, rich and poor, without having regard to any person. And that ye take not by yourself, or by other, privily nor apertly, gift nor reward of gold nor silver, nor of any other thing which may turn to your profit, unless it be meat or drink, and that of small value, of any man that shall have any plea or process hanging before you, as long as the same process shall be so hanging, nor after for the same cause. And that ye take no fee, as long as ye shall be Justice, nor robes of any man great or small, but of the King himself. And that ye give none advice or counsel to no man great nor small, in no case where the King is party. And in case that any of what estate or condition they be, come before you in your Sessions with force and arms or otherwise against the peace, or against the form of the Statute thereof made, to disturb execution of the Common Law, or to menace the people that they may not pursue the law, that ye shall cause their bodies to be arrested and put in prison; and in case they be such that ye cannot arrest them, that ye certify the King of their names, and of their misprision hastily, so that he may thereof ordain a conveneable remedy. And that ye by your self nor by other, privily nor apertly, maintain any plea or quarrel hanging in the King's Court, or elsewhere in the Country. And that ye deny to no man common right by the King's Letters, nor none other man's, nor for none other cause; and in case any letters come to you contrary to the law, that ye do nothing by such letters, but certify the King thereof, and proceed to execute the law, notwithstanding the same letters. And that ye shall do and procure the profit of the King and of his Crown, with all things where ye may reasonably do the same. And in case ye be from henceforth found in default in any of the points aforesaid, ye shall be at the King's will of body, lands, and goods, thereof to be done as shall please him, as God you help and all Saints.'

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## [ No. XV. ] 20 Edward III. c. 1.—The Justices of both Benches, Assise, &c. shall do Right to all Men, take no Fee but of the King, nor give Counsel where the King is Party.

20 Edward III. c. 1.

Justices shall do right to all persons without regard of letters.

Shall certify all illegal commandments.

Shall take no fee of any, but of the King;

'FIRST, We have commanded all our Justices, That they shall from henceforth do equal law and execution of right to all our subjects, rich and poor, without having regard to any person, and without omitting to do right for any letters or commandment which may come to them from us, or from any other, or by any other cause. And if that any letters, writs, or commandments come to the Justices, or to other deputed to do law and right according to the usage of the realm, in disturbance of the law, or of the execution of the same, or of right to the parties, the Justices and other aforesaid shall proceed and hold their Courts and Processes where the pleas and matters be depending before them, as if no such letters, writs, or commandments were come to them; and they shall certify us and our Council of such commandments which be contrary to the law, as afore is said. And to the intent that our Justices should do even right to all people in the manner aforesaid, without more favour shewing to one than to another, we have ordained and caused our said Justices to be sworn, That they shall not from henceforth, as long as they shall be in the office of Justice, take fee nor robe of any man, but of ourself, and that they shall take no gift nor reward by themselves, nor by other, privily nor apertly, of any man that hath to do before them by

'any way, except meat and drink, and that of small value; and that 'they shall give no counsel to great men or small, in case where we be 'party, or which do or may touch us in any point, upon pain to be at 'our will, body, lands, and goods, to do thereof as shall please us, in 'case they do contrary. And for this cause we have increased the fees 'of the same our Justices in such manner, as it ought reasonably to 'suffice them.'

No. XV. 20 Edw. III. c. 1.

nor give counsel where the King is party. Their fees increased.

## [ No. XVI. ] 20 Edward III. c. 2.—Barons of the Exchequer shall do Right to all Men without Delay.

'IN the same manner we have ordained in the right of the Barons of 'the Exchequer, and we have expressly charged them in our presence, That they shall do right and reason to all our subjects great 'and small; and that they shall deliver the people reasonably and without delay of the business which they have to do before them, without 'undue tarrying as hath been done in times past.'

20 Edward III. c. 2.

## [ No. XVII. ] 20 Edward III. c. 3.—Justices of Gaol-delivery, &c. and their Associates, shall take an Oath.

'ITEM, We have ordained, That all they which shall be Justices assigned by Commission to hear and determine, and such as shall be 'associated to them, and also Justices of Assises to be taken in the 'Country, and of Gaol-delivery, and such as shall be assigned and associated to them, shall make first an Oath in certain points, according 'as to them shall be enjoined by our Council in our Chancery, before 'that any Commission be to them delivered.'

20 Edward III. c. 3.

## [ No. XVIII. ] 8 Richard II. c. 2.—No Man of Law shall be Justice of Assise, or Gaol-delivery in his own Country.

'ITEM, it is ordained and assented, That no man of law shall be 'from henceforth Justice of Assises, or of the common deliverance 'of Gaols in his own Country; and that the Chief Justice of the Common Bench be assigned amongst other to take such Assises and deliver 'Gaols. But as to the Chief Justice of the King's Bench, it shall be as 'for the most part of an hundred years last past was wont to be done.'

8 Richard II. c. 2.

## [ No. XIX.] 8 Richard II. c. 3.—None of the Justices or Barons shall take any Fee or Reward but of the King, nor shall give Counsel where the King is Party, or in any Suit depending before them.

ITEM, Whereas late in the time of the noble King EDWARD, Grandfather of our Sovereign Lord the King that now is it was ordained, That Justices as long as they should be in the office of Justices, should not take fee or robe of any except of the King, and that they should not take gift nor reward by them nor yet by other, privily or apertly, of any man which should have any thing to do afore them in any wise, except meat and drink of small value; and that they should not give counsel to any great or small in things or affairs where the King is party, or which in any wise touch the King upon a certain pain contained in the said Ordinance. And in the same manner it is ordained of the Barons of the Exchequer, as in the said Ordinance is more plainly contained the said Ordinance being rehearsed in the Parliament, it is (ordained and assented), That no Justice of the King's Bench nor of the

8 Richard II. c. 3.

No. XIX. 8 Rich. II. c. 3.

Common Bench, nor none of the Barons of the Exchequer, as long as they shall be in the office of Justice or Barons shall take from henceforth robe, fee, pension, gift nor reward, of any but of the King [except reward] of meat and drink, which shall be of no great value. And that from henceforth they shall give no counsel to any great or small in things or affairs, wherein the King is party, or which in any wise touch the King, and that they be not of any man's counsel in any cause, plea or quarrel, hanging the plea before them or in other of the King's Courts or places upon pain of loss of their office, and making to the King fine and ransom.

## [ No. XX. ] 8 Richard II. c. 4.—The Penalty if a Judge or Clerk make a false Entry, rase a Roll, or change a Verdict.

8 Richard II. c. 4.

"ITEM, At the complaint of the said Commonalty made to our Lord "the King in the Parliament, for that great disherison in times past "was done of the people, and may be done by the false entering of "pleas, rasing of Rolls, and changing of Verdicts;" 'it is accorded 'and assented, That if any Judge or Clerk be of such default (so that 'by the same default there ensueth disherison of any of the parties) 'sufficiently convict before the King and his Council, by the manner 'and form which to the same our Lord the King and his Council shall 'seem reasonable, and within two years after such default made, if the 'party grieved be of full age, and if he be within age, then within two 'years after that he shall come to his full age, he shall be punished by 'fine and ransom at the King's will, and satisfy the party. And as 'to the restitution of the inheritance desired by the said Commons, the 'party grieved shall sue by Writ of Error, or otherwise, according to 'the law, if he see it expedient for him.'

## [ No. XXI. ] 9 Richard II. c. 1.—A Confirmation of all Statutes not repealed, saving of the Statute of 8 Rich. II. c. 3.

9 Richard II. c. 1.

'FIRST, it is accorded and assented, That all the Statutes made by 'the Parliament in the times of the King's noble Progenitors, and 'in his own time, as well of Sheriffs, Under-Sheriffs, Escheators, and 'Clerks of Sheriffs, as of Purveyors, and all other good Statutes and 'Ordinances not repealed by Parliament, shall be firmly holden and 'kept, and due execution thereof done, according to the effect of 'the same, except the Statute of the Justices and Barons of the Exche-'quer made at the last Parliament, which because it is very hard, and 'needeth declaration, the King will that it be of no force till it be de-'clared by Parliament.'

## [No. XXII. ] 20 Richard II. c. 3.—No Man shall sit upon the Bench with the Justices of Assise.

20 Richard II. c. 3.

'ITEM, The King doth will and forbid, that no Lord, nor other of 'the Country, little nor great, shall sit upon the Bench with the 'Justices to take Assises, in their Sessions in the Counties of *England*, 'upon great forfeiture to the King; and hath charged his said Justices, 'that they shall not suffer the contrary to be done.' (1)

(1) I have thought it eligible to insert this and the other preceding Numbers as matter of curiosity. Mr. Barington, in relation to this Statute, observes, that by the ancient Rules of the Parliament of Paris, no Member of that Body may frequent the Houses of Princes, or go to the Louvre; and that it is not usual with us at present for the puisne Judges to go to Court.

## [ No. XXIII.] 4 Henry IV. c. 23.—Judgments given shall continue until they shall be reversed by Attaint or Error.

No. XXIII. 4 Hen. IV. c. 23.

"ITEM, Where as well in Plea real as in Plea personal, after judgment "given in the Courts of our Lord the King, the parties be made to "come upon grievous pain, sometime before the King himself, some-"time before the King's Council, and sometimes to the Parliament, to "answer there of new, to the great impoverishing of the parties afore-"said, and in the subversion of the common law of the land;" 'it is 'ordained and established, That after judgment given in the Courts of 'our Lord the King, the parties and their heirs shall be thereof in peace, 'until the judgment be undone by Attaint or by Error, if there be Error, 'as hath been used by the laws in the times of the King's Progenitors.'

## [ No. XXIV. ] 13 Henry IV. c. 2.—A Confirmation of the Statute of 8 Rich. II. cap. 2. touching Justices of Assise and Gaol-delivery, for so long as it shall please the King.

13 Henry IV. c. 2.

ITEM, It is ordained and established, That the Statute made in the eighth year of King RICHARD the Second, wherein be contained these words which follow, "Item, it is agreed and ordained, that no man of the law shall be from henceforth Justice of the Assises or of the common deliverance of Gaols in his own Country; and that the Chief Justice of the Common Bench be assigned (among other Justices) to take such Assises and deliver Gaols; but as to the Chief Justice of the King's Bench, it shall be done as hath been accustomed for the most part of an hundred years last past; shall be holden and kept, notwithstanding any Statute or Ordinance made to the contrary. And that no Chief Justice of the King's Bench be in any wise hereafter made Justice to take Assises in any County within the Realm of *England*, but only in the County of *Lancaster*. And that this Statute hold place, and be in force as long as shall please the King for salvation of his prerogative.

## [ No. XXV. ] 11 Henry VII. c. 3.—The Justices of Assise in their Sessions, and the Justices of Peace in every County, upon Information for the King, shall have Authority to hear and determine all Offences and Contempts (saving Treason, Murder, or Felony) committed by any Person against the Effect of any Statute made, and not repealed.

## [ No. XXVI.] 32 Henry VIII. c. 21.—Trinity Term, and the Abbreviation thereof.

32 Henry VIII. c. 21.

The causes of abbreviating Trinity Term.

'WHERE the Term called *Trinity Term* of long time hath been, and 'yet is, yearly used to be holden and kept in such time and season 'of the year, that by occasion thereof not only great peril and danger 'of infection of the Plague, and sundry other sicknesses have happened 'to the King's loving subjects, as well Nobles as other, but also hath 'been and yet is, a great impediment and let to a great multitude of 'the King's poor subjects, for provision and gathering in of harvest, 'and other their necessary business and livings in that season of the 'year most expedient to be exercised:' The King's most Royal Majesty having especial respect, as well to the health as to the wealth of his people, by the assent of the Lords Spiritual and Temporal, and the

No. XXVI. 32 H. VIII. c. 21.

There shall be only four days of return in Trinity Term, and not above.

Commons, in this present Parliament assembled, and by the authority of the same, ordaineth, enacteth and establisheth, That in the said *Trinity Term* shall be four common days of return only and not above; that is to say, the first day of return shall be, and be called, *In Crastino Sanctæ Trinitatis*; the second day of return of the same Term shall be, and be called, *In Octabis Sanctæ Trinitatis*; the third day of return of the same Term shall be, and be called, *In Quindena Sanctæ Trinitatis*; and the fourth day of return of the same term shall be, and be called, *A die Sanctæ Trinitatis, in tres septimanas*; and that the same days of return shall be observed and kept in all our Sovereign Lord the King's High Courts of Record hereafter to be holden at *Westminster*, or other place or places at the assignment, appointment or agreement of our said Sovereign Lord, his heirs or successors; and that from or after the Feast of St. *Michael* the Archangel next coming, there shall not be, nor be called, any days of return *In Crastino Sancti Joannis Baptistæ*, *Octabis Sancti Joannis Baptistæ*, nor *Quindena Sancti Joannis Baptistæ*, nor any of them.

When Trinity Term shall begin, and every return thereof.

II. And be it further enacted by the authority aforesaid, That the said Term of the Holy *Trinity* shall yearly for ever, from the said Feast of St. *Michael* the Archangel next coming, begin the *Monday* next after *Trinity Sunday*, whensoever it shall happen to fall, for the keeping of the Essoigns, Profers, Returns, and other Ceremonies heretofore used and kept, in like manner and form as in times past hath been used to be done in the day of return commonly called *In Octabis Sanctæ Trinitatis*; and that the full Term of the said *Trinity Term* shall yearly for ever begin and take his commencement the *Friday* next after *Corpus Christi* Day, in such and in like manner and form, to all purposes, intents and respects, as heretofore hath been used the *Wednesday* next after *Corpus Christi* Day; and that from and after the said Feast of St. *Michael* the Archangel next coming, the said second and third days of return, called *Octabis Sanctæ Trinitatis*, and *Quindena Sanctæ Trinitatis*, shall take their commencement and begin as in times past hath been used; and the said fourth day, called *A die Sanctæ Trinitatis in tres septimanas*, shall take his commencement and begin from the same *Trinity Sunday* into three weeks then next following, and shall have his return with the fourth day, as is accustomed in other like days of return.

Days given in real actions.

III. And be it further enacted by the authority aforesaid, That if after the said Feast of Saint *Michael* the Archangel next coming, any writ in any real action come in or be returnable into any of our said Sovereign Lord the King's Courts *In Octabis Sancti Hilarii*, then day shall be given *In Crastino Sanctæ Trinitatis*; if *In Quindena Sancti Hilarii*, *In Octabis Sanctæ Trinitatis*: if *In Crastino Purificationis Beatæ Mariæ*, *In Quindena Sanctæ Trinitatis*; if *In Octabis Purificationis Beatæ Mariæ*, then *A die Sanctæ Trinitatis in tres septimanas*: and if after the same Feast of Saint *Michael* the Archangel any writ in any real action come into any of our said Sovereign Lord the King's Courts returnable *In Crastino Sanctæ Trinitatis*, then day shall be given *In Crastino Animarum*; if *In Octabis Sanctæ Trinitatis*, *In Crastino Sancti Martini*; if *In Quindena Sanctæ Trinitatis*, *In Octabis Sancti Martini*; if *A die Sanctæ Trinitatis in tres septimanas*, *In Quindena Sancti Martini*.

Days given in a writ of dower.

IV. And be it further enacted by the authority aforesaid, That if after the said Feast of Saint *Michael* the Archangel next coming, any Writ of Dower come into any of our Sovereign Lord the King's Courts, and be returnable in *Quindena Paschæ*, then day shall be given *In Crastino Sanctæ Trinitatis*; if *A die Paschæ in tres septimanas*, *In Octabis Sanctæ Trinitatis*; if *A die Paschæ in unum mensem*, *in Quindena Sanctæ Trinitatis*; if *A die Paschæ in quinque septimanas*, or *In Crastino Ascensionis Domini*, then day shall be given unto the day of *A die Sanctæ Trinitatis in tres septimanas*. And if after the same Feast of Saint *Michael* the Archangel next coming, any Writ of Dower come into any of our said Sovereign Lord the King's Courts of Record *In Crastino Sanctæ Trinitatis*, then day shall be given *In Octabis Sancti Michaelis*; if *In Octabis*

*Sancti Trinitatis, In Quindena Sancti Michaelis*; if *In Quindena Sanctæ Trinitatis, A die Sancti Michaelis in tres septimanas*; if *A die Sanctæ Trinitatis in tres septimanas, A die Sancti Michaelis in unum mensem*; or otherwise as is appointed, limited and declared by the Statute of *Marlebridge*, in the twelfth Chapter thereof made and provided.

No. XXVI. 32 H. VIII. c. 21.

V. And it is further enacted by the authority aforesaid, That all common Writs and Processes, as well personal as mixed, which shall fortune to be returnable in the said *Trinity Term*, shall have and keep the said Returns of *Crastino Sanctæ Trinitatis, Octabis Sanctæ Trinitatis, Quindena Sanctæ Trinitatis*, and *A die Sanctæ Trinitatis in tres septimanas*, or any one of them.

Where the Justices may assign special days for the returning of writs.

VI. Provided always, and it is further enacted by the authority aforesaid, That in such and like cases and processes, as special days have been used to be appointed, assigned and given for the returning of writs and processes, it shall be lawful to the Justices of every of the King's said Courts of Record for the time being, in all the processes by them awarded, to assign and appoint special days of Returns, as by their discretions shall be thought convenient.

Days given in Assises of darrein presentment, Quare impedit and Attaint.

VII. Provided also, and be it further enacted by the authority aforesaid, That the days in Assise of *Darrein Presentment*, and in plea of *Quare impedit*, limited and appointed by the Statute of *Marlebridge*, and also the days to be given in attaint, limited in the Statute made in the fifth year of the noble King *Edward* the Third, being not contrariant to the tenour of this Act, shall be holden firm and stable, and shall stand in their full force and effect.

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## [ No. XXVII. ] 33 Henry VIII. c. 24.—An act that none shall be Justice of Assise in his own Country, &c.

33 Hen. VIII. c. 24.

'WHERE in the Parliament holden in the eighth year of King 'Richard the Second, it was enacted, ordained, and established, 'That no man learned in the laws of this realm should from thenceforth 'be Justice of Assise in the country where he dwelleth; and that the 'Chief Justice of the Common Place should be from thenceforth as-'signed, among other Justices, to the taking of the said Assises; but as 'to the Chief Justice of the King's Bench, there should be done and used 'as hath been used for the most part for the space of one hundred years 'next before, as by the said act more at large it doth and may appear: 'Since the making of which said good Act and Law, divers Justices 'and men learned in the laws of this realm, by their own means, 'industry and policy, and for their own commodity and ease, have 'obtained, contrary to the form of the said Act, to be Justices of 'Assises in the countries and counties where they were born or were 'inhabiting, whereby some jealousy of their affection and favour to-'ward their kinsmen, alliance and friends within the said countries or 'counties where they were so born or inhabiting, hath been conceived 'and had against them by the King's most loving subjects of the same 'countries and counties:'

The reasons for making of this statute.

II. For reformation whereof, the King's most loving subjects and the Commons in this present Parliament assembled, most humbly beseech and desire the King's Majesty, and that it may be enacted by the King's Majesty, with the assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by authority of the same, That no Justice, nor other man learned in the laws of this realm, shall at any time from or after the Feast of *Easter* next coming, use nor exercise the office of Justice of Assise within any county where the said Justice was born or doth inhabit, upon pain to forfeit for every offence done contrary to the form of this present Act, one hundred pounds; the moiety whereof to be to our Sovereign Lord the King, and the other moiety thereof to the party that will sue for the same in any of the King's Courts, by bill, plaint, information, action of debt or

No man shall be Justice of Assise in the county where he was born or doth dwell.

No. XXVII. 33 H. VIII. c. 24.

otherwise, in the which suit no protection, essoign, nor wager of law shall be admitted nor allowed.

This Statute doth not extend to the clerk of Assise.

III. Provided alway, and be it further enacted by the authority aforesaid, That this act, or any thing herein contained, shall not extend, be construed or interpreted, to touch or concern any person or persons that now are, or hereafter shall be, Clerk or Clerks of Assises, and shall be associate to any Justice of Assise, of or in any county, city or town within this realm of *England*, wherein the same person or persons, Clerk or Clerks so associate do dwell or were born; but that all and every Clerk and Clerks of Assises, which now do exercise or occupy, or hereafter shall exercise or occupy any office or clerkship of Assises, shall and may exercise and occupy the same in any county, city or town, wherein the same Clerk or Clerks of Assises do dwell or were born; any thing in this Act contained to the contrary notwithstanding.

Officers of cities or corporate towns.

IV. Provided also, That these terms, *Justices of Assises, or other persons learned in the laws of this realm*, shall not extend or in any wise be interpreted to any Mayors, Sheriffs, Recorders, Stewards, Bailiffs, Sewters or other officers, being born or dwelling within any city, borough or town within this realm of *England*, but that they may be Justices of Assises of fresh force, or of other Assises in the same city, borough or town where he or they do or shall dwell, or were born, as they or any of them before this time have or might have been, to all intents and purposes; any thing in this act contained to the contrary notwithstanding.

Justices of both Benches.

V. Provided alway, That this Act, nor any thing therein contained, shall be prejudicial to any Justice or Justices of the one Bench or the other, for taking, hearing, or determining Assises in the said Courts, in the one Bench or the other, nor to any Justice that shall take any Assise by or upon adjournment for difficulty of the same.

No Clerk of Assise shall be of counsel with any person in that circuit.

VI. Provided alway, and be it enacted, That any Clerk of Assise during the only time of the session of or for any Assise or Assises, or of or for any *Nisi Prius*, shall not be of counsel with any person or persons within any circuit whereof he shall be Clerk of Assise, otherwise than to that office only appertaineth, upon pain to forfeit for every time offending contrary to this Statute, ten pounds; the one moiety thereof to be to the King, our Sovereign Lord, and the other moiety to the party grieved, to be sued in any of the King's Courts of Record, by action of debt, bill, plaint, information or otherwise, in which suit no essogin, protection, wager of law, or other dilatory plea, shall be admitted or allowed.

The Justices, Justice Clerks, and Clerks of Assise in the county of Lancaster.

VII. Provided also, and be it enacted by the authority aforesaid, That this Act or any thing therein contained, extend not unto the Justices, Justice Clerks, or Clerk of Assises, within our Sovereign Lord the King's Duchy and County Palatine of *Lancaster*, nor to any of them that now be, or hereafter shall be; but that the same Justices, Justice Clerks, and Clerk, and every of them, shall and may execute their offices, and every of them, in such manner and form as they, or any of them, have used to do before the making of this present Act; this Act or any thing therein contained to the contrary thereof notwithstanding.

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## [ No. XXVIII. ] 16 Charles I. c. 6.—An Act concerning the Limitation and Abbreviation of *Michaelmas* Term.

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## [ No. XXIX. ] 12 and 13 William III. c. 2.—An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subjects.

12 & 13 Wm. III. c. 2. Conditions for securing the

'III. AND whereas it is requisite and necessary that some further 'provision be made for securing our religion, laws and liber-'ties, from and after the death of His Majesty and the Princess *Anne*

No. XXIX. 12 & 13 W. III. c. 2.

'of *Denmark*, and in default of issue of the body of the said Princess 'and of His Majesty respectively;' Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same.

religion, laws, &c. in default of issue of the Princess Anne and the King.

'THAT whosoever shall hereafter come to the possession of this 'Crown, shall join in communion with the Church of *England*, as by 'law established.

'That in case the Crown and Imperial Dignity of this realm shall 'hereafter come to any person, not being a native of this kingdom of '*England*, this nation be not obliged to engage in any war for the de- 'fence of any dominions or territories which do not belong to the Crown 'of *England*, without the consent of Parliament.

'Repealed by 1 Geo. I. st. 2. c. 51.'

'That no person who shall hereafter come to the possession of this 'Crown, shall go out of the dominions of *England*, *Scotland*, or *Ireland*, 'without consent of Parliament.

'Repealed by 4 Anne, c. 8. § 24.'

'That from and after the time that the further limitation by this Act 'shall take effect, all matters and things relating to the well governing 'of this kingdom, which are properly cognizable in the Privy Council 'by the laws and customs of this realm, shall be transacted there, and 'all resolutions taken thereupon shall be signed by such of the Privy 'Council as shall advise and consent to the same.

'That after the said limitations shall take effect as aforesaid, no per- 'son born out of the kingdoms of *England*, *Scotland*, or *Ireland*, or the 'dominions thereunto belonging (although he be naturalized or made a 'denizen, except such as are born of *English* parents) shall be capable 'to be of the Privy Council, or a member of either House of Parlia- 'ment, or to enjoy any office or place of trust, either civil or military, 'or to have any grant of lands, tenements or hereditaments from the 'Crown, to himself or to any other or others in trust for him.

'This clause extends not to persons naturalized at or before the accession of King Geo. I. to the Crown.'

'That no person who has an office or place of profit under the King, 'or receives a pension from the Crown, shall be capable of serving as a 'member of the House of Commons.

'Repealed by 4 Ann. c. 8. § 25. 6 Ann. c. 7. 1 Geo. I. c. 56.'

'That after the said limitation shall take effect as aforesaid Judges 'Commissions be made *quamdiu se bene gesserint*, and their salaries 'ascertained and established; but upon the address of both Houses of 'Parliament it may be lawful to remove them.

'That no pardon under the Great Seal of *England* be pleadable to an 'impeachment by the Commons in Parliament.

'And whereas the laws of *England* are the birthright of the people 'thereof, and all the kings and queens who shall ascend the throne of 'this realm ought to administer the government of the same according 'to the said laws; and all their officers and ministers ought to serve 'them respectively, according to the same:' The said Lords Spiritual and Temporal, and Commons, do therefore further humbly pray, That all the laws and statutes of this realm, for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same now in force, may be ratified and confirmed, and the same are by His Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, and by authority of the same, ratified and confirmed accordingly.

All laws for securing the established religion, &c. confirmed.

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[ No. XXX. ] 12 George II. c. 27.—An Act for explaining and amending an Act made in the eighth Year of the Reign of King *Richard* the Second, intituled, "No Man of Law shall be Justice of Assise or Gaol Delivery in his own Country;" and another Act made in the thirty-third Year of the Reign of King *Henry* the Eighth, intituled, "An Act that none shall be Justice of Assise in his own Country, &c."

No. XXX. 12 George II. c. 27.

8 Rich. 2. c. 2. 33 H. 8. c. 24.

'WHEREAS by an Act made in the eighth year of the reign of King *Richard* the Second, intituled, "No man of law shall be Justice of Assise or Gaol Delivery in his own country;" it is enacted, 'That no man of law shall from thenceforth be Justice of Assise, or of the common deliverance of gaols, in his own country: And whereas by an Act made in the thirty-third year of King *Henry* the Eighth, intituled, "An Act that none shall be Justice of Assise in his own Country, &c.," it is amongst other things enacted, That no Justice nor other man learned in the law of this realm shall use or exercise the office of Justice of Assise within any county where the said Justice was born or doth inhabit, upon pain to forfeit for every offence done contrary to the said Act, one hundred pounds: And whereas such Acts have been construed to extend, not only to Justices of Assise and Justices of Gaol delivery, but also to Justices of *Nisi Prius*, and Justices of *Oyer* and *Terminer*; which construction hath been attended with very great inconveniencies;' for remedy thereof be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful from time to time and at all times hereafter, to and for the Chief Justice and Justices of either Bench, and to and for the Chief Baron, and other Barons of the Court of *Exchequer*, and to and for any other person or persons learned in the law, who shall be appointed Justice or Justices of *Oyer and Terminer* or Gaol Delivery in any county or counties within that part of *Great Britain* called *England*, to use and exercise the office or offices of Justice or Justices of *Oyer and Terminer* or Gaol Delivery, in any such county or counties, notwithstanding they or any of them shall have been born or do inhabit within any such county or counties, and that they shall not be liable for so doing to the said penalty or forfeiture of one hundred pounds, or to any other forfeiture or penalty whatsoever; any thing in the said recited Acts, or either of them, or any other law, custom, or usage to the contrary in any wise notwithstanding.'

Judges empowered to act as Judges of Gaol Delivery, &c. in their own counties.

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## [ No. XXXI. ] 24 George II. c. 48.—An Act for the Abbreviation of *Michaelmas* Term.

24 George II. c. 48.

'WHEREAS in the beginning of the Term of Saint *Michael*, commonly called *Michaelmas* Term, very little business can be done on account of the several Holidays that are observed by the High Courts of Record of our Sovereign Lord the King, between the first day of the said Term and the sixth day of *November* following;' Therefore, for the ease and benefit of his Majesty's subjects, may it please your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the Feast Day of Saint *Michael* the Archangel in the year of our Lord One thousand seven hundred and fifty-two, there shall be in *Michaelmas* Term four common days of Return only (that is to say) the first day of Return thereof shall be and be called the Morrow of *All Souls*; the second day of Return of the same Term shall be and be called the Morrow of Saint *Martin*; the third day of Return of the same Term shall be and be called in eight days of Saint *Martin*; and the fourth day of Return of the same Term shall be and be called in fifteen days of Saint *Martin*.

Four common days of Return only to be in Michaelmas Term;

II. And be it further enacted by the authority aforesaid, That the same days of Return shall be observed and kept in all the High Courts of Record of our Sovereign Lord the King, his heirs and successors; hereafter to be holden at *Westminster*, or other place or places, at the assignment or appointment of our Sovereign Lord the King, his heirs and successors; and that from and after the Feast Day of Saint *Michael*

the same to be observed in all the Courts.

No returns to

No. XXXI. 24 Geo. II. c. 48.

the Archangel in the year of our Lord one thousand seven hundred and fifty-two, there shall not be nor be called any days of Return from the day of Saint *Michael* in three weeks, nor from the day of Saint *Michael* in one month, nor either of them; and that the said Term of Saint *Michael* yearly for ever, from and after the said Feast of Saint *Michael* the Archangel one thousand seven hundred and fifty-two, shall begin in and upon the said Morrow of *All Souls* whensoever it shall happen to fall (except it be on the Lord's Day, commonly called *Sunday*), and then on the morrow next after for the keeping of essoigns, profers, returns, and other ceremonies heretofore used and kept, in like manner and form as hath been used to be done in the day of the Return, commonly called from the day of Saint *Michael* in three weeks; and that the full Term of Saint *Michael* shall yearly for ever, from and after the said Feast of Saint *Michael* one thousand seven hundred and fifty-two, in all the aforesaid Courts of Record, begin and take its commencement upon the fourth day of the said Morrow of *All Souls* (except it be on the Lord's Day, commonly called *Sunday*), and then on the morrow next after. ter, except those days shall happen on

be from Michaelmas day in three weeks, nor from that day in one month.

The Term to begin on the Morrow of All Souls,

and the full Term on the fourth day after a Sunday.

III. And for the more speedy proceeding in writs of dower *unde Nihil habet*, and writs of entry for common recoveries to be sued and prosecuted by writs of entry or writs of right of advowson, and in all other real actions; Be it enacted by the authority aforesaid, That after the Feast of Saint *Michael* the Archangel one thousand seven hundred and fifty-two coming, if any writ in any such action come in, and be returnable in his Majesty's Court of *Common Pleas*, in the day of the Return of the Morrow of *All Souls*, then day shall be given in fifteen days of Saint *Martin*; if on the Morrow of Saint *Martin* then in eight days of Saint *Hilary*; if in eight days of Saint *Martin*, then in fifteen days of Saint *Hilary*; if in fifteen days of Saint *Martin*, then on the Morrow of *The Purification*; if in eight days of Saint *Hilary*, then in eight days of *The Purification*; if in fifteen days of Saint *Hilary*, then in fifteen days of *Easter*; if on the Morrow of *The Purification*, then in three weeks from the day of *Easter*; if in eight days of *The Purification*, then in one month from the day of *Easter*; if in fifteen days of *Easter*, then in five weeks from the day of *Easter*; if in three weeks from the day of *Easter*, then on the Morrow of *The Ascension of our Lord*; if in one month from the day of *Easter*, then on the Morrow of the *Holy Trinity*; if in five weeks from the day of *Easter*, then in eight days of the *Holy Trinity*; if on the Morrow of *The Ascension of our Lord*, then in fifteen days of the *Holy Trinity*; if on the Morrow of the *Holy Trinity*, then in three weeks from the day of the *Holy Trinity*; if in eight days of the *Holy Trinity*, then on the Morrow of *All Souls*; if in fifteen days of the *Holy Trinity*, then on the Morrow of Saint *Martin*; if in three weeks of the *Holy Trinity*, then in eight days of Saint *Martin*.

Days of Returns of Writs.

IV. Provided nevertheless, and be it further enacted by the authority aforesaid, That in all writs of dower *unde nihil habet*, after issue joined, it shall not be needful or requisite to have above fifteen days betwixt the teste and return of the *Venire facias*, or any other process to be sued out for the trial of the said issue, but that the writ of *Venire facias*, and other process, after issue joined, until judgment be given, having only fifteen days between the teste and return thereof, shall be good and effectual in law, as is used in personal actions; any law, statute, or usage to the contrary heretofore notwithstanding.

In writs of dower, &c. after issue joined, fifteen days sufficient between the teste and return of the venire.

V. And it is hereby further enacted by the authority aforesaid, That from and after the said Feast of Saint *Michael* the Archangel one thousand seven hundred and fifty-two, all writs and process hereafter to be made out of any of his Majesty's Courts at *Westminster*, and having day from the fourth day of the Morrow of *The Ascension*, to the Morrow of the *Holy Trinity*, shall be good and effectual in law, notwithstanding there be not fifteen days between the teste and the Return of the said writs.

Writs, &c. having day from the fourth of the Morrow of the Ascension to the Morrow of the Holy Trinity to be good.

VI. And be it further enacted by the authority aforesaid, That all writs or process made, or to be made returnable upon the following

Writs, &c. returnable in

No. XXXI. 24 Geo. II. c. 48.

Returns, *videlicet*; in three weeks of Saint *Michael*, or from the day of Saint *Michael* in one month next following, or having days between either of the said Returns, shall, by force and virtue of this Act, have day unto the said Morrow of *All Souls*, and the parties to the said writs and process shall then appear, and plead and proceed thereupon to all intents and purposes, as if the said writs and process had been made returnable on the said Morrow of *All Souls*.

three weeks of Saint Michael, or in one month from that day, to have day unto the Morrow of All Souls.

Days of return of common writs in the Term.

VII. And be it further enacted, That all common writs, as well personal as mixt, which shall happen to be returnable in the said *Michaelmas* Term, shall have and keep the said Returns of the Morrow of *All Souls*, the Morrow of Saint *Martin*, in eight days of Saint *Martin*, and in fifteen days of Saint *Martin*, or any of them.

Writs of summons to warrant, abridged to four returns inclusive.

'VIII. And whereas before the making of this Act, all writs of summons to warrant against the vouchers upon common recoveries had, in writs of entry and writs of right of advowson, were made for five Returns inclusive:' Now, for the more speedy perfecting of such recovery, be it enacted by the authority aforesaid, That from and after the said Feast of Saint *Michael* the Archangel one thousand seven hundred and fifty-two, all and every such writs of summons to warrant upon the appearance of the tenant to every such writ of entry and writ of right of advowson, shall and may be made and abridged to four Returns inclusive.

Courts to appoint special days of returns where usual.

IX. Provided always, and it is hereby further enacted by the authority aforesaid, That in such and like cases and process as special days have been used to be appointed and assigned and given for the return of writs and process, it shall be lawful to the Justices of every the King's said Courts of Record for the time being, in all the process by them awarded, to assign and appoint special days of Returns, as by them shall be thought convenient.

Days of assise in darrein presentment, &c. to stand.

5 Edw. III. c. 6.
23 H. VIII. c. 3.

X. Provided also, and be it enacted by the authority aforesaid, That the days of assise in *Darrein Presentment* and in a plea of *Quare impedit* limited and appointed by the statute of *Marlbridge*, and also the days to be given in attaint limited in the statute made in the fifth year of the reign of King Edward the Third, and also in the statute made in the three and twentieth year of the reign of the late King Henry the Eighth, being not contrary to the tenor of this Act, shall be holden firm, and stand in their full force and effect.

'XI. And whereas by divers Charters heretofore granted to the citizens of *London*, by his Majesty's royal predecessors Kings and Queens of *England*, it is directed that the mayor of the said city, after he is chosen, shall be presented and sworn before the King or Queen of *England* in their Court of Exchequer at *Westminster*, or before the Barons of the said Court: And whereas the said solemnity, after every annual election of the said mayor, hath been usually kept and observed by the said city on the twenty-ninth day of *October*, except the same fall on a *Sunday*, and then on the day following;' Be it enacted by the authority aforesaid, That from and after the said Feast of Saint *Michael*, which shall be in the year of our Lord one thousand seven hundred and fifty-two, the said solemnity of presenting and swearing the mayors of the city of *London*, after every annual election into the said office, in the manner and form heretofore used on the twenty-ninth day of *October*, shall be kept and observed on the ninth day of *November* in every year, unless the same shall fall on a *Sunday*, and in that case on the day following; any rule or order in any of the charters of the said city, or the usage or customs thereof to the contrary notwithstanding.

The presenting and swearing the mayors of London to be on ninth of November.

'XII. And whereas by the abbreviation of *Michaelmas* Term pursuant to this Act, the Morrow of *All Souls* will not be in full Term, and thereby will prove inconvenient for the purpose of ordaining sheriffs pursuant to an Act of Parliament made in the fourteenth year of the reign of King Edward the Third, intituled, "How long a sheriff shall continue in his office;"' Be it therefore enacted by the authority aforesaid, that from and after the commencement of this Act, the same

14 Ed. III. c. 7.
The day of assembling at the Exchequer

officers and persons, who by virtue of the said last mentioned Act, or any other law or statute, ought to assemble at the Exchequer yearly on the Morrow of *All Souls*, for the ordaining or nominating of sheriffs, shall not assemble on that day, but instead thereof shall assemble yearly on the Morrow of Saint *Martin* at the Exchequer, in the like manner, and for the same intent and purpose.

No. XXXI. 24 Geo. II. c. 48.

for ordaining Sheriffs to be on the Morrow of Saint Martin.

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## [ No. XXXII. ] 1 Geo. III. c. 23.—An Act for rendering more effectual the Provisions in an Act* made in the twelfth and thirteenth Years of the Reign of his late Majesty King *William* the Third, intituled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject," relating to the Commissions and Salaries of Judges.

'WHEREAS by an Act passed in the twelfth and thirteenth years of the reign of his late Majesty King WILLIAM the Third, intituled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject;" it was enacted, That after the limitation of the Crown thereby made should take effect judge's commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both houses of parliament, it might be lawful to remove them: And whereas your Majesty has been graciously pleased to declare from the throne to both houses of parliament, that you look upon the independency and uprightness of judges, as essential to the impartial administration of justice, as one of the best securities to the rights and liberties of your loving subjects, and as most conducive to the honour of your crown; and in consequence thereof, your Majesty has recommended it to the consideration of your parliament, to make further provision for continuing judges in the enjoyment of their offices during their good behaviour, notwithstanding the demise of your Majesty, or any of your heirs and successors; and your Majesty has also desired your faithful commons that you may be enabled to secure the salaries of judges, during the continuance of their commissions: And whereas in return for this paternal goodness, and in the justest sense of your tender concern for the religion, laws and liberties of your people, we have taken this important work into our consideration, and have resolved to enable your Majesty to effectuate the wise, just, and generous purposes, of your royal heart: May it therefore please your Majesty that it may be enacted.' And be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the commissions of judges for the time being shall be, continue, and remain, in full force, during their good behaviour, notwithstanding the demise of his Majesty (whom God long preserve) or of any of his heirs and successors; any law, usage, or practice to the contrary thereof in any wise notwithstanding.

1 George III. c. 23. 12 & 13 W. III. c. 2.

Judges continued during their good behaviour, notwithstanding any demise of the Crown;

II. Provided always, and be it enacted by the authority aforesaid, That it may be lawful for his Majesty, his heirs and successors, to remove any judge or judges upon the address of both houses of parliament.

but may be removed upon address of Parliament.

III. And be it enacted by the authority aforesaid, That such salaries as are settled upon judges for the time being, or any of them, by Act of Parliament, and also such salaries as have been or shall be granted by his Majesty, his heirs and successors, to any judge or judges, shall, in all time coming, be paid and payable to every such judge and judges for the time being, so long as the patents or commissions of them, or any of them respectively, shall continue and remain in force.

Their salaries secured.

No. XXXII. 1 Geo. III. c. 23.

IV. And be it further enacted by the authority aforesaid, That such salaries of judges as are now or shall become payable out of the annual rent or sum granted for the support of his Majesty's household, and of the honour and dignity of the Crown, shall, from time to time, after the demise of his Majesty, or any of his heirs and successors, be charged upon and paid and payable out of, such of the duties or revenues granted for the uses of the civil government of his Majesty, his heirs and successors, as shall be subsisting after every such demise respectively, until some further or other provision be made by Parliament for the expenses of the civil government; and from and immediately after the making of such provision, and during the continuance thereof, such salaries shall be paid and payable out of all or any of the monies which shall be applicable to such uses and expenses as aforesaid.

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## [ No. XXXIII. ] 39 Geo. III. c. 113.—An Act to enable such Persons as his Majesty may be pleased to appoint to the Office of Chief Justice, or of one of the Justices of either Bench, or of Chief Baron, or one of the Barons of the Exchequer, to take upon themselves the Degree of a Serjeant at Law in Vacation. [12th *July* 1799.]

39 George III. c. 113.

'WHEREAS it is expedient whenever the office of Chief Justice, or of one of the justices of either bench, or of Chief Baron, or one of the Barons of his Majesty's Exchequer, happens to be vacant, that a proper person should be speedily appointed to such office; and that such person should be of the degree of a Serjeant at Law, which degree cannot be taken in vacation; May, it please your Majesty, that it may be enacted;' and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for his Majesty, at any time before the commencement of the next *Michaelmas* Term, and during any succeeding vacation, whilst the office of Chief Justice, or of one of the justices of either bench, or of Chief Baron, or of one of the Barons of his Majesty's Exchequer, shall be vacant, from time to time, to cause a writ to be issued out of his Majesty's High Court of Chancery, directed to any such person, being a Barrister at Law, as his Majesty shall think fit, returnable immediately in the said Court, commanding such person to appear in the said Court, and to take upon himself the state and dignity of a Serjeant at Law; and such person shall and may thereupon forthwith appear before the Lord High Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal for the time being, at such time and place as the said Chancellor, Keeper, or Commissioner, shall appoint; and such person so appearing and taking the oaths usually administered to a Serjeant at Law, shall, without any further act or ceremony, be, and be deemed and taken to be, a Serjeant at Law, sworn to all intents and purposes: And in case his Majesty shall be pleased, by writ or by letters patent under the great seal of *Great Britain*, to create or constitute any such person, so to be sworn as aforesaid, Chief Justice of his Majesty's Court of King's Bench, or to grant to any such person the office of Chief Justice of his Majesty's Court of Common Pleas, or of one of the justices of either bench, or of Chief Baron, or of one of the Barons of his Majesty's Exchequer, every such person shall be deemed and taken to be lawfully appointed to every such office, and shall and may lawfully hold and enjoy the same, and do all matters and things whatsoever in such and the same manner, to all intents and purposes, as if such person had been a Serjeant at Law, sworn in the usual and ordinary course.

His Majesty during any vacation, while the office of Chief Justice, &c. is vacant, may cause a writ to be issued out of the Court of Chancery to any barrister at law he shall think fit, to appear in that Court, and take upon himself the dignity of a serjeant at law; and such person shall, on taking the usual oaths, be without further ceremony deemed a serjeant at law.

His Majesty may grant to such person the office of Chief Justice of either Bench, &c.

## [No. XXXIV.] 49 Geo. III. c. 91.—An Act to empower the Judges to try Civil Causes in their own Counties in *England*. [10th *June*, 1809.]

No. XXXIV. 49 Geo. III. c. 91.

'WHEREAS by a Statute made in the eighth year of the reign of 'King RICHARD the Second, it is among other things enacted, 'That no man of law shall from thenceforth be justice of assises in his 'own country: And whereas by an Act made in the thirty-third year 'of King HENRY the Eighth, intituled, "An Act that none shall be 'Justice of Assise in his own Country;" it is enacted, That no justice 'nor other man learned in the laws of this realm shall use nor exercise 'the office of justice of assise within any county where the said justice 'was born or doth inhabit: And whereas a compliance with the afore-'said provisions has been attended with great inconveniences; for re-'medy whereof,' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful from time to time and at all times hereafter, to and for the Chief Justice and Justices of either Bench, and to and for the Chief Baron and other Barons of the Court of Exchequer, and to and for any other person or persons learned in the law, who shall be appointed justice or justices of assise in any county or counties within that part of *Great Britain* called *England*, to use and exercise the office or offices of justice or justices of assise, and to act under any commission of nisi prius in any such county or counties, notwithstanding they or any of them shall have been born or do inhabit within any such county or counties; and that they shall not be liable for so doing to any forfeiture or penalty whatsoever; any thing in the said recited laws, or either of them, or any other law, custom, or usage to the contrary in any wise notwithstanding.

8 Rich. 2. c. 2.

33 Hen. 8. c. 24.

Any Justice of either Bench, or Baron of the Exchequer, or other persons appointed, may be Justices of Assise in any county, although they were born or do inhabit therein.

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## [No. XXXV.] 57 Geo. III. c. 11.—An Act to facilitate the Progress of Business in the Court of King's Bench in *Westminster Hall*. [17th *March* 1817.]

WHEREAS the Court of King's Bench at *Westminster*, by reason of the great increase of business therein, has of late been much occupied during Term in the adding and justifying of special bail, whereby other business of great public concern has been much obstructed and delayed; and the same inconvenience is likely still to continue unless some remedy is provided for the same: And whereas it would tend materially to remedy this inconvenience if one of the judges of the same Court should be enabled to sit and proceed, when occasion should so require, upon the said business of adding and justifying bail in some place in or near to *Westminster Hall* other than the usual place of sitting for the whole Court, whilst others of the judges of the same Court should proceed in the dispatch of the other business of the same Court in their ordinary place of sitting in *Westminster Hall*; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for any one of the judges of the Court of King's Bench at *Westminster*, when occasion shall so require, to sit apart from the other judges of the same Court, in some place in or near to *Westminster Hall*, for the business of adding and justifying special bail in causes depending in the same Court, whilst others of the judges of the same Court are at the same time proceeding in the dispatch of the other business of the same Court in bank, in its usual place of sitting for that purpose in *Westminster Hall*; and that the proceedings so had by and before such one of the judges so sitting apart for those purposes shall be as good and effectual in the law to all intents and purposes as if the same were had before the Court assembled and sitting as usual in its ordinary place of sitting in *Westminster Hall*.

57 George III. c. 11.

One of the judges may sit apart for adding and justifying special bail.

1210

No. XXXVI. 57 Geo. III. c. 18.

[ No. XXXVI. ] 57 Geo. III. c. 18.—An Act to facilitate the hearing and determining of Suits in Equity in his Majesty's Court of Exchequer at *Westminster*. [29th *March*, 1817.]

WHEREAS the proceedings on the common law side of the Court of Exchequer have of late years greatly increased, by reason whereof a sufficient proportion of time cannot be allotted for hearing and determining suits in equity in the said Court: And whereas the business of that Court might be more easily dispatched if the Lord Chief Baron, or one other of the barons of the degree of the coif, were duly authorised to hear and determine suits and proceedings on the equity side thereof, as is hereinafter enacted; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this Act the Lord Chief Baron of the said Court for the time being shall have power to hear and determine all causes, matters, and things which shall be at any time depending in the said Court of Exchequer as a court of equity; and that if the said Lord Chief Baron shall by sickness, or other unavoidable cause, be prevented from sitting for the purposes aforesaid, then it shall and may be lawful for His Majesty and his successors to nominate and appoint from time to time, by warrant under the royal sign manual, revocable at pleasure, any one other of the barons of the degree of the coif of the said Court for the time being to hear and determine such causes, matters, and things.

The Chief Baron of the Court empowered to hear and determine suits in equity.

II. And be it further enacted by the authority aforesaid, That the said Lord Chief Baron, or the baron so to be appointed, shall sit at such times as the Lord Chief Baron and such baron shall respectively, with regard to matters to be heard before them respectively, appoint, and whether the rest of the barons of the said Court shall be sitting or not; and that all decrees, orders, and acts of the said Lord Chief Baron, or of such baron so appointed as aforesaid, shall be deemed and taken to be respectively, as the nature of the case shall require, decrees, orders, and acts of the said Court of Exchequer, and shall have force and validity and be executed accordingly; subject only to be reversed, discharged, or altered by the House of Lords, upon appeal thereto, and as hereinafter mentioned.

To sit at such times as the Lord Chief Baron shall appoint.

All decrees to have full force and validity; subject to appeal to the House of Lords.

III. Provided that it shall and may be lawful for the said Lord Chief Baron, upon petition by any of the parties concerned, to rehear any cause or matter before decided, ordered, adjudged, or decreed by such Lord Chief Baron, or by any other baron appointed as aforesaid; and also for any baron appointed as aforesaid, upon such petition as aforesaid, to rehear any cause or matter before decided, ordered, adjudged, or decreed by him the same baron, and respectively thereupon to make such order as may be just.

Baron may on petition rehear causes.

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[ No. XXXVII. ] 58 Geo. III. c. 31. An Act to amend an Act passed in the fifty-third year of His Majesty's reign to make further regulations for the building and repairing of Court Houses, and Sessions Houses in *Ireland*. [23d *May*, 1818.]

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[ No. XXXVIII. ] 1 Geo. IV. c. 68.—An Act for the better Administration of Justice in the Court of Exchequer Chamber, in *Ireland*. [15th *July* 1820.]

[No. XXXIX.] 1 Geo. IV. c. 107.—An Act for appropriating to the use of the Master of the Rolls for the time being the Rents of the Rolls Estate and the Dividends of the Funds in the Court of Chancery, arising from the surplus Rents of that Estate. [24th *July* 1820.]

No. XXXIX. 1 Geo. IV. c. 107.

[No. XL.] 1 and 2 Geo. IV. c. 16.—An Act for further facilitating the dispatch of business in the Court of King's Bench. [6th *April* 1821.]

[No. XLI.] 1 and 2 Geo. IV. c. 121.—An Act to alter and abolish certain Forms of Proceedings in the Exchequer and Audit Office, relative to Public Accountants, and for making further provisions for the purpose of facilitating and expediting the passing of Public Accounts in *Great Britain;* and to render perpetual and amend an Act passed in the fifty-fourth year of His late Majesty, for the effectual examination of the accounts of certain Colonial Revenues. [11th *July* 1821.]

1 & 2 Geo. IV. c. 121.

WHEREAS it hath been found by experience that great inconvenience and much unnecessary labour, expense, and delay are occasioned in the passing of public accounts, by reason of certain forms and proceedings relating thereto, which are required by law, or by the ancient course and practice of various offices in the receipt and in the Court of His Majesty's Exchequer, and in the Audit Office, to the manifest injury as well of the public service as of the individual accountant; and it is expedient, for remedy thereof, that certain of the said forms and proceedings should be abolished, and that others of them should be rendered more efficient for the purposes for which they were designed: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That instead of the general imprest certificates of monies issued at the receipt of His Majesty's Exchequer, by way of imprest or upon account, which have heretofore been made out and transmitted half-yearly to the commissioners for auditing the public accounts, general imprest certificates of all monies so issued, shall, from and after the tenth day of *October* One thousand eight hundred and twenty-one, be made out in the office of the Auditor of the said Exchequer, four times in each year, for the four quarterly periods ending the fifth day of *January*, the fifth day of *April*, the fifth day of *July*, and the tenth day of *October*, in every year; and shall be signed by him or his chief clerk, and be examined in the office of the Clerk of the Pells, and be signed by his deputy; which said certificates shall respectively contain an account of all monies issued at the receipt of His Majesty's Exchequer, by way of imprest or upon account, during the preceding quarter, and shall specify and distinguish the date and amount of every such issue made within that period, and whether in money or in Exchequer bills; and such quarterly general imprest certificates shall be transmitted to the aforesaid commissioners, within thirty days after each of the said quarterly days respectively; and all such quarterly imprest certificates, which, from and after the said tenth day of *October* One thousand eight hundred and twenty-one, shall be made out and transmitted to the said commissioners, shall be written in the *English* language in a common legible hand and character, and the several sums of money expressed

General imprest certificates to be made out in the Exchequer four times a year, instead of half-yearly;

and to distinguish the date and amount of every issue;

and shall be written in the English language and in common characters, and

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the sums in common numerals or figures.

therein as the amounts of the several issues, as well as the dates of such issues, shall be written and described in common numerals or figures, any thing in any act or acts now in force, or in the ancient course or usage of the Exchequer, to the contrary thereof in any wise notwithstanding.

Not to prevent any accountants from demanding from the officer of the Auditor of the Exchequer special imprest rolls.

II. Provided always, and be it further enacted, That nothing in this Act contained shall extend, or be construed to extend, to prevent the regular transmission of the general imprest rolls, half-yearly, to the office of His Majesty's Remembrancer of the Court of Exchequer, according to the ancient usage of the Exchequer; nor to prevent any person or persons to whom any monies may have been issued by way of imprest and upon account, from demanding from the office of the Auditor of the Exchequer, a special imprest certificate or special imprest certificates of all monies so issued to him or them; and all such special imprest certificates which shall be demanded after the tenth day of *October*, One thousand eight hundred and twenty-one, shall be made out in such manner and form as herein is directed in regard to the said quarterly general imprest certificates; save and except only that such special imprest certificate may contain the whole of the issues made to any person or persons for the same service for the space of one year.

25 G. III. c. 52.

46 G. III. c. 141.

III. And whereas by virtue of an Act passed in the twenty-fifth year of His late Majesty, intituled *An Act for better examining and auditing the Public Accounts of this Kingdom*, and of another Act passed in the forty-sixth year of His late Majesty, intituled *An Act for making more effectual provision for the more speedy and regular Examination and Audit of the Public Accounts of this Kingdom*, certain powers are vested in the commissioners for auditing the public accounts, for compelling all persons accounting before them to deliver in their accounts: And whereas writs of *distringas ad computandum*, with certain schedules annexed, commonly called the ordinary process, still continue to be issued after *Hilary* and *Trinity* Terms in every year, from the office of His Majesty's Remembrancer of the Court of Exchequer to the Sheriffs of *London* and *Middlesex*, although proceedings have very rarely been had thereupon; and the said process hath therefore long since become in a great degree nugatory and useless; be it therefore enacted, That the practice of issuing such process, in regard to persons liable to account before the said commissioners, and all proceedings, acts, matters and things whatsoever, heretofore used or practised in the office of His Majesty's said Remembrancer in relation thereto, shall, from and after the tenth day of *October* One thousand eight hundred and twenty-one, be discontinued, and be no longer used or practised in the said office; any thing in any act or acts now in force, or in the ancient course or usage of the Exchequer, to the contrary thereof in any wise notwithstanding.

The ordinary process of issuing twice a year writs of distringas ad computandum, from the office of the King's remembrancer, to be wholly discontinued.

No account, &c. to be transmitted from the commissioners of audit to the office of the King's Remembrancer, except such as may be required by the provisions of this Act.

IV. And whereas the said commissioners for auditing the public accounts are required by law or by ancient usage to make and transmit at various times of the year to His Majesty's Remembrancer of the Court of Exchequer, certain accounts, certificates, lists, and copies or extracts of documents in their office; And whereas the said practice hath been found by experience to be attended with inconvenience to the public service, without answering any useful purpose; be it therefore enacted, That from and after the tenth day of *October* One thousand eight hundred and twenty-one, no accounts or copies, or extracts of accounts, nor any certificates or lists, nor any copies or extracts of any documents in the office of the said commissioners, shall be made up and transmitted by them to the said Remembrancer, other than and except such as may be required to be transmitted to that officer by the said recited Acts of the twenty-fifth and forty-sixth years of His late Majesty, or under the provisions of this Act, or such as the said commissioners may in their discretion deem it useful or expedient for the public service to continue to transmit to the said Remembrancer, and which when so transmitted, shall be as valid and effectual to all intents and purposes, as if their transmission had been expressly directed by this Act.

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45 G. III. c. 55.

V. And whereas by the said recited acts of the twenty-fifth and forty-sixth years of His late Majesty, and by another Act passed in the forty-fifth year of His said late Majesty, intituled *An Act to amend an Act made in the twenty-fifth year of His present Majesty, for better examining and auditing the Public Accounts of this Kingdom, and for enabling the Commissioners in certain cases to allow of Vouchers, although not stamped according to law*, certain public officers therein named, and every other public officer who shall pay, issue, or deliver to any person or persons whomsoever, money for public services by way of imprest or upon account, are required to transmit to the commissioners for auditing the public accounts, periodically at the times therein specified, certificates or accounts of all sums so paid, issued, or delivered as aforesaid, in order that such persons may forthwith be put in charge, and rendered accountable for the same: And whereas the practice of setting persons *insuper* in declared accounts, hath by reason thereof been rendered of no real utility; be it therefore enacted, That from and after the fifth day of *July* One thousand eight hundred and twenty-one, the practice by which persons have heretofore been set *insuper* in the declared accounts of any principal accountant, in respect of any public monies which may have been paid, issued, and delivered to them by such principal accountants by way of imprest and upon account, shall cease and be wholly discontinued: Provided always, that if the said commissioners shall, in the exercise of their discretion, deem it expedient for the public service that the name or names of any such person or persons so rendered accountable as aforesaid, should be entered as a public accountant or public accountants on the general imprest roll of His Majesty's Exchequer, then and in every such case it shall be lawful for the said commissioners to transmit a certificate, containing the name of every such person, and the total amount of the sums with which he is become chargeable, and also the name of the principal accountant by whom such sum or sums was or were paid, issued, or delivered to him, to His Majesty's Remembrancer of the Court of Exchequer, who shall, upon the receipt of such certificate, cause the same to be inrolled in his office, and such inrolment shall be and be deemed a record in his office as valid and effectual to enable any process or processes in the law against the party so rendered chargeable, and to and for all other intents, constructions, and purposes whatsoever, as if such party had been then actually returned an *insuper* accountant in any declared account duly inrolled as of record in his office.

The practice of setting persons *insuper* in declared accounts, to be discontinued.

Commissioners may, if they think it expedient, transmit a certificate containing the names of the persons so put in charge, and the amount of the sums with which they are chargeable, to the King's Remembrancer, who shall inrol the same as of record.

VI. Provided always, and be it further enacted, That if it shall appear to the Lord High Treasurer or the Commissioners of the Treasury for the time being, or any three or more of them, that it will be for the benefit of the public service that the said certificates or accounts, which by the said recited acts of the twenty-fifth, forty-fifth, and forty-sixth years of His late Majesty, or any of them, are required to be periodically transmitted by the respective public officers therein mentioned to the said commissioners for auditing the public accounts, should be so transmitted at any other shorter periods than those respectively prescribed in the said acts, it shall be lawful for the said High Treasurer or the Commissioners of the Treasury, or any three or more of them, by warrant under their hands, to order and direct that the said certificates or accounts shall be transmitted by such public officers respectively, to the said commissioners, at such shorter periods as shall or may be specified in such warrant; and every such order and direction shall be as valid and effectual, and shall be obeyed, observed, and kept in such and the same manner to all intents and purposes as if the same had been expressly ordered and directed by this Act.

The Commissioners of the Treasury may direct that certificates of monies issued by certain public officers shall be transmitted to the commissioners of audit at shorter periods than is now by law directed.

VII. And whereas much unnecessary labour and expense to the public are occasioned in the office of the Commissioners for auditing the public accounts, by the practice of making up and transcribing two parts of every account, one on paper, and the other on parchment, for the purpose of being presented for declaration before the Chancellor of the Exchequer: and whereas the passing of declared accounts through

Only one account is to be made out for declaration, and to be written in the English language,

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and in common numerals or figures.

the respective offices of the Lord Treasurer's Remembrancer and of the Clerk of the Pipe, is attended with great inconvenience and much unnecessary delay and expense, without answering any purpose of real utility; for remedy thereof be it enacted, That from and after the tenth day of *October* One thousand eight hundred and twenty-one, one part only of every account shall be made up and transcribed in the said office of the Commissioners for auditing the public accounts, for the purpose of being presented for declaration before the Chancellor of His Majesty's Exchequer, which account shall be written on paper in the *English* language, in common characters, and the several sums of money expressed therein shall be written and described in common numerals or figures; and every such account, after the same shall have been declared before the Chancellor of the Exchequer, and been signed by two or more of the other Commissioners of the Treasury, shall be transmitted to the office of His Majesty's Remembrancer of the Court of Exchequer, and shall there be inrolled as of record, in like manner in all respects as the part of every account transcribed on parchment hath heretofore been inrolled, and after inrolment thereof, every such account, instead of being transmitted to the office of the Lord Treasurer's Remembrancer, and from thence to the office of the Clerk of the Pipe, shall be returned to the office of the Commissioners for auditing the public accounts, where the same shall finally remain deposited, and be carefully preserved and kept, any law, usage, or custom to the contrary thereof in any wise notwithstanding; and the inrolment of such declared accounts in the said office of His Majesty's Remembrancer shall be as valid and effectual for enabling the proceeding for and recovery of any balances and interest due or to become due thereon and for all other purposes whatever in any wise concerning or relating to such accounts, as if the same had been also recorded in the office of the Lord Treasurer's Remembrancer and of the Clerk of the Pipe, according to the course of the exchequer before the passing of this Act.

The King's Remembrancer, if required, to grant certified copies or extracts of the inrolment of any account in his office, for the purpose of being recorded in the offices of the Lord Treasurer's Remembrancer or Clerk of the Pipe.

VIII. Provided always, and be it further enacted, That in case it shall at any time be found necessary for the due proceeding in any suit, action, or process at law in His Majesty's Court of Exchequer, arising upon or out of any account so declared and inrolled as aforesaid, that such account, or any part thereof, or any abstract thereof or extract therefrom, should become and be made matter of record in the offices of the Lord Treasurer's Remembrancer, and of the Clerk of the Pipe, or in either of them, then and in every such case His Majesty's Remembrancer of the Court of Exchequer, or his deputy, shall and he is hereby required, upon application made to him for that purpose, to cause a true and exact copy to be made from the inrolment in his office of such account, or of such part or parts thereof as may be required, and shall certify the same to be a true copy or extract of such inrolment, under his hand, and shall cause such copy or extract so certified, to be transmitted to the said office of the Lord Treasurer's Remembrancer, who shall thereupon cause the same to be inrolled as of record in his office, and certify, either by himself or his sufficient deputy, such inrolment at the foot or on the back thereof, and if necessary, cause the same to be transmitted to the office of the Clerk of the Pipe, who shall also cause the same, together with the certificate of the Lord Treasurer's Remembrancer, or of his deputy, to be inrolled as of record in his office; and such respective inrolments as of record in the said offices of the Lord Treasurer's Remembrancer, and of the Clerk of the Pipe, shall be and be deemed as valid and effectual, and shall and may be applied and made use of in such and the like manner, for or towards the due proceeding in any such suit, action, or process at law, to all intents, constructions, and purposes whatsoever, as any record of any declared account made before the passing of this act in the said offices, or either of them, according to the ancient course and practice of the Exchequer, hath heretofore been deemed valid and effectual, or could or might be applied or made use of for or towards the due proceeding in any such suit, action, or process at law, as aforesaid.

IX. And be it further enacted, That from and after the tenth day of *October* One thousand eight hundred and twenty-one, whenever any account shall have been declared before the Chancellor of the Exchequer, the commissioners for auditing the public accounts shall, as soon as conveniently may be after such declaration, cause a certificate thereof to be made out, which shall contain the date of such declaration, the total amount of the sums forming the charge and discharge parts of the said account, together with the amount of the balance (if any) either indebted or in surplusage; or in case there should be no such balance, then the words "Even and Quit" shall be inserted in the said certificate, which shall be signed by any two or more of the said commissioners, and shall be delivered to the accountant, or to any person duly applying for the same on his behalf, without any fee or reward whatsoever being demanded for the same; and every such certificate, so made out and signed as aforesaid, shall be as valid and effectual to discharge the accountant, either in the whole or for so much of the monies with which he was originally chargeable, as shall therein appear to have been duly accounted for, and for all other purposes whatsoever relating to or concerning the said account, as if a quietus or abstract of the said account had duly issued from the office of the Clerk of the Pipe, according to the course of His Majesty's Exchequer in use before the passing of this Act; any law, custom, or usage to the contrary thereof in any wise notwithstanding: Provided always, that when the account so declared shall be a sole or a final account, and a balance shall appear thereby to be due from the accountant, the said commissioners shall not make or grant such certificate as aforesaid, until the accountant shall have satisfied them, by the production of a tally or other sufficient document, that he hath discharged the full amount of such balance, and all interest due thereon, or that he hath been relieved from the payment thereof, or of so much thereof as shall not have been paid.

The certificate of the commissioners of audit of a declared account, to be the quietus of the accountant.

X. And be it further enacted, That in all cases where any estate belonging to a public accountant shall be sold under any writ of extent, or any decree or order of the Courts of Chancery or Exchequer, and the purchaser or purchasers thereof, or of any part thereof, shall have paid his, her, or their purchase-money into the receipt of His Majesty's Exchequer, an entry of such payment shall be made by the commissioners for auditing the public accounts in the declared account of such public accountant, and from and after such payment and entry as aforesaid, such purchaser or purchasers, his, her, and their heirs and assigns, shall be wholly exonerated and discharged from all further claims of His Majesty, his heirs or successors, for or in respect of any debt arising upon such declared account, although his, her, or their purchase-money shall not be sufficient in amount to discharge the whole of the said debt.

Where estate of public accountant shall be sold under writ of extent, &c. and the purchase-money paid, an entry shall be made by the commissioners for auditing public accounts in the declared account.

XI. And whereas the Lord Treasurer's Remembrancer and the Clerk of the Pipe, and such of the officers and clerks in those offices respectively, to whom any fees or proportions of fees were before the passing of this Act payable by law or ancient usage on inrolment or otherwise, in respect of all accounts examined and audited in the office of the commissioners for auditing the public accounts, will, by reason of the provisions of this Act, from and after the fifth day of *July* One thousand eight hundred and twenty one, lose all benefit and advantage whatever arising from such fees or proportions of fees; and it is just and reasonable that some compensation should be made for the loss thereof, to the persons now holding the said offices of Lord Treasurer's Remembrancer and of the Clerk of the Pipe, and also to such of the officers and clerks now being in their said respective offices, as may respectively be in the actual enjoyment of or entitled by law or the ancient usage of office to succeed to those situations in the said offices, in respect of which the said fees or proportions of fees were payable; be it therefore enacted, That it shall be lawful for the Commissioners of the Treasury for the time being, or any three or more of them, to order and direct that such annual or other compensations shall from time to time be made to the persons now holding the offices of Lord Treasurer's Re-

The commissioners of the treasury may allow compensation for the loss of fees in the office of the Lord Treasurer's Remembrancer, and the Clerk of the Pipe.

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membrancer and Clerk of the Pipe, and to such respective officers or clerks in those offices as aforesaid, for the loss of fees or proportions of fees which they will respectively sustain by reason of the provisions of this Act, as to the said commissioners of the Treasury shall seem just and reasonable; which Compensation, in case the same shall be annual, shall commence from the Fifth day of *July* One thousand eight hundred and twenty-one; and all such compensations, whether annual or in gross, shall be payable by the commissioners for auditing the public accounts, out of the same fund as the fees now payable in those respective offices on the passing of public accounts are paid: Provided always, that no such compensation shall be allowed to continue beyond the lives of the respective individuals, who at the time of the passing of this Act were either in the actual receipt and enjoyment of the fees or proportions of fees for which such compensations may respectively have been granted, or of the individuals now entitled by law or the antient usage of office to succeed to those situations in the said offices, in respect of which such fees or proportion of fees were before the passing of this Act respectively payable: Provided also, that no such compensation shall be considered as finally and conclusively granted, until the same shall have been first submitted to Parliament.

The commissioners of audit may examine persons upon oath as to the nature and amount of the fees on passing of public accounts.

XII. And be it further enacted, That for the better enabling the commissioners of his Majesty's Treasury to form a correct judgment of the nature and amount of the compensations which it may be reasonable and proper to grant to the Lord Treasurer's Remembrancer and Clerk of the Pipe, and to any of their officers or clerks, for the loss of fees on the passing of public accounts, it shall be lawful for the commissioners for auditing the public accounts, or any two of them, under the direction of the said commissioners of his Majesty's Treasury for the time being, or any three or more of them, to call before them any person or persons whomsoever, and to examine them upon oath, which oath any two of the said commissioners for auditing the public accounts are hereby empowered to administer, in regard to the nature, legality, and amount of the fees on the passing of public accounts, in respect of which any such compensation as aforesaid may be claimed, and as to the grounds of such claim, and to transmit the said examinations to the commissioners of his Majesty's Treasury for their information and consideration, previously to the grant of any such compensations as aforesaid.

41 G. 3. s. 1. c. 22.

XIII. And whereas by virtue of an Act passed in the forty-first year of his late Majesty, intituled *An Act to authorize his Majesty to appoint Commissioners for the more effectual Examination of Accounts of Public Expenditure for his Majesty's Forces in the* West Indies, *during the present War*; and of another Act passed in the forty-sixth year of his late Majesty, intituled *An Act to provide for the more effectual Examination of Accounts of the Expenditure of the Public Money in the* West Indies, *and for the better Discovery of Frauds and Abuses therein*, certain commissioners were appointed by letters patent under the Great Seal of *Great Britain*, for examining and investigating the public accounts of military expenditure in the *West Indies*, incurred from the first day of *January* One thousand seven hundred and ninety-three until twelve months after the ratification of a definitive treaty of peace, and for enquiring into all frauds and abuses committed by any persons whatever concerned in such expenditure: and whereas by another Act passed in the forty-eighth year of his late Majesty, intituled *An Act for enabling the Commissioners appointed to examine Accounts of Public Expenditure in the* West Indies *more speedily to investigate the said Accounts*, further provision was made for the more effectually carrying into execution the purposes of the said acts: And whereas the number of commissioners appointed by virtue of the said recited acts of his late Majesty, for the examination of accounts of expenditure in the *West Indies*, hath, by deaths or vacancies, otherwise occasioned, been reduced to three: And whereas there are still depending in the office of the said commissioners accounts of the expenditure incurred in the *West Indies*,

46 G. 3. c. 80.

48 G. 3. c. 91.

up to the expiration of twelve months after the ratification of the definitive treaty of peace with *America*, to a very considerable amount, the examination whereof hath not yet been completed; be it further enacted, That in case his Majesty shall deem it for the good of the public service, that the accounts still depending unexamined in the office of the commissioners for examining accounts of expenditure in the *West Indies*, should be transferred for their further and final examination and audit to the office of the commissioners for auditing the public accounts of *Great Britain*, then and in such case it shall be lawful for his Majesty, by his letters patent under the Great Seal of *Great Britain*, to revoke the commission appointing such commissioners for the examination of accounts of expenditure in the *West Indies*; and by the same letters patent, to order and direct that one of the said commissioners shall from thenceforth be and be deemed to be a commissioner for auditing the public accounts of *Great Britain*, in addition to the number of commissioners authorized by virtue of the said recited act of the forty-sixth year of his late Majesty, for auditing the public accounts of *Great Britain*, and such additional commissioner shall from thenceforth hold his office by the same tenure, and be invested with the same powers and authorities, and shall have and receive the same salary payable in the same manner, and shall be and be deemed a commissioner for auditing the public accounts of *Great Britain*, as fully and effectually to all intents, constructions, and purposes as if he had been appointed a commissioner for auditing the public accounts of *Great Britain*, under and by virtue of the said last-mentioned act; any thing therein contained to the contrary thereof in any wise notwithstanding.

His Majesty empowered to revoke the commission for the examination of West India accounts, and to transfer the accounts to the office of commissioners of audit; and to direct that one of the commissioners should be an additional commissioner for auditing the public accounts.

XIV. Provided always, and be it further enacted, That from and after the date of such letters patent as aforesaid, no vacancy which may arise in the number of the commissioners for auditing the public accounts shall be filled up by the appointment of any other commissioners, without the further authority of an Act of Parliament for the purpose of authorizing such appointment, until the number of such commissioners shall be reduced to five or less, in which case his Majesty may from time to time, as often as any such vacancy shall happen, appoint new commissioners, so as to keep up their number always at six.

No vacancy to be filled up without the authority of Parliament, until the number of commissioners shall be reduced to five.

XV. And be it further enacted, That in case and whenever his Majesty shall revoke the commission for appointing commissioners for the examination of accounts of expenditure in the *West Indies*, and shall direct that one of the commissioners shall be an additional commissioner for auditing the public accounts of *Great Britain*, it shall be lawful for the Lord High Treasurer or the commissioners of the Treasury for the time being, or any three or more of them, by warrant under their hands, to transfer to the establishment of the said commissioners for auditing the public accounts of *Great Britain*, such of the officers and clerks now employed in the office for examining the accounts of expenditure in the *West Indies*, as they may deem it expedient to transfer to that establishment.

In case his Majesty shall revoke the West India commission, the commissioners of the Treasury may make regulations in the audit office.

XVI. And whereas by virtue of an Act passed in the fifty-third year of his late Majesty, intituled *An Act for the more speedy and effectual Examination and Audit of the Accounts of Military Expenditure in* Spain *and* Portugal; *for removing Delays in passing the Public Accounts; and for making new Arrangements for conducting the Business of the Audit Office*, one of the commissioners for auditing the public accounts of *Great Britain*, was appointed to be Auditor general of accounts of the public expenditure in *Spain* and *Portugal*, with an establishment of officers and clerks under him for that purpose, and with such powers and authorities for the execution of the said office there, as in the said recited Act are mentioned: And whereas by another Act passed in the fifty-fourth year of his said late Majesty, the said Auditor-general was invested with the same powers and authorities in respect of the accounts of public expenditure in *France* as were given to and vested in him by virtue of the said recited Act of the fifty-third year aforesaid, with respect to the accounts of public expenditure in

53 G. 3. c. 150.

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*Spain* and *Portugal*: And whereas the said Auditor-general hath returned with his establishment to this kingdom, by reason whereof his peculiar functions and powers as Auditor-general under the said recited Acts have ceased and determined, but the examination and audit of the said accounts hath not yet been completed, and it is therefore expedient that the examination of the said accounts should be proceeded in and completed under his immediate and separate superintendence and directions, as one of the commissioners for auditing the public accounts, or that some other special provision should be made for that purpose; be it therefore enacted, That it shall be lawful for the said commissioners of his Majesty's Treasury for the time being, or any three or more of them, by warrant under their hands, to make such arrangements, regulations, and provisions for completing the examination and audit of the said accounts, as shall appear to them best calculated for the attainment of that important object; and the commissioners for the time being, under whose immediate and separate superintendence the said accounts shall be placed, shall have and is hereby invested with such and the like powers of examination upon oath (which oath he is hereby empowered to administer,) touching all matters and things relating to the said accounts, as by the said Act of the fifty-third year of his late Majesty were vested in the Auditor-general; any thing herein contained to the contrary thereof in any wise notwithstanding.

Commissioners of the Treasury may make regulations for completing the examination of the Peninsula accounts.

XVII. And whereas by the said recited Act of the twenty-fifth year of his late Majesty, any three or more of the commissioners for auditing the public accounts are empowered to examine upon oath, and to administer the same in the manner therein mentioned; and by the said recited Act of the forty-sixth year of his late Majesty for auditing the public accounts of *Great Britain*, it is enacted, that any thing which therein or by any of the Acts therein recited is directed to be done by the Commissioners for auditing the public accounts, or by any of the boards into which the said commissioners might be divided, might be done by the majority of the said commissioners, or by the majority of any of the said boards respectively: Now be it enacted, That notwithstanding any thing in the said recited acts, or in any other acts now in force relating to the examination and audit of the public accounts of *Great Britain* contained to the contrary thereof, it shall and may be lawful for any two or more of the commissioners for auditing the public accounts, and they are hereby empowered, to examine upon oath (which oath any two or more of them are hereby authorized to administer,) and to do all other acts, matters, and things whatsoever, relating to or in any wise concerning the examination and audit of any public accounts, which by virtue of the said Acts, any three or more, or a majority of the said commissioners, or a majority of any board into which the said commissioners might be divided, are authorized and empowered to do.

Any three of the commissioners empowered to administer an oath.

XVIII. And be it further enacted, That in case any person or persons, in the course of any examination upon oath before the commissioner, having for the time being the separate superintendence and direction of the accounts of the public expenditure in *Spain*, *Portugal*, and *France*, or before any two of the commissioners for auditing the public accounts for the time being, shall wilfully and corruptly give false evidence, such person or persons so offending, and being thereof duly convicted, shall be subject and liable to such pains and penalties as by any law now in being persons convicted of wilful and corrupt perjury are subject and liable to.

Persons giving false evidence to be guilty of perjury.

XIX. And be it further enacted, That it shall be lawful for the said commissioners of his Majesty's Treasury for the time being, or any three or more of them, from time to time, by warrant under their hands, to direct such new arrangements in the office of the commissioners for auditing the public accounts, and to assign to the commissioners for the time being, individually or collectively, the exercise of such duties, and to make such orders and regulations in respect to the conduct of the business of the office, and for the superintendence and

The commissioners of the Treasury may establish regulations.

control to be exercised over the officers, clerks, and other persons employed therein, as the said commissioners of the Treasury shall from time to time deem expedient, and best calculated to ensure the most efficient discharge of the several duties of such commissioners, officers, clerks, and other persons respectively, and the most prompt and speedy examination and audit of the public accounts of the kingdom.

Public officers abroad, authorizing or directing any improper or irregular expenditure, may be rendered personally chargeable for the same.

XX. And whereas by the said first recited Act of the forty-sixth year of his late Majesty, provision is made for the prevention of improper or irregular expenditure of the public monies, by orders of persons employed in his Majesty's service in parts beyond the seas, such persons not being themselves the accountants for such expenditure: And whereas it is expedient to make further provision in respect thereof; be it therefore enacted, That whenever it shall be made appear to the said commissioners of his Majesty's Treasury, that any sum or sums which shall have been issued, paid, or expended, by orders from any person employed in his Majesty's services, in parts beyond the seas (such person not being himself the accountant for such issue, payment, or expenditure), ought not to have been so issued, paid, or expended, or ought not to be charged to the public, then and in every such case the said commissioners of his Majesty's Treasury, or any three or more of them, shall thereupon call upon the person by whose orders or under whose authority such issue, payment, or expenditure shall have been made, for an explanation of the circumstances under which the same was ordered or authorized, and the reasons or grounds upon which such order or authority was founded; and if, upon receiving such explanation, the said commissioners of his Majesty's Treasury shall still be of opinion that such person ought to be charged with the amount of such issue, payment, or expenditure, it shall be lawful for the said commissioners of his Majesty's Treasury, or any three or more of them, by warrant under their hands, to authorize and direct the commissioners for auditing the public accounts, to require the person by whose order or authority such issue, payment, or expenditure shall have been made, to render an account of the monies so issued, paid, or expended; and the person so required to account shall thereupon be and be deemed a public accountant with respect to such monies, in as full and ample a manner, to all intents and purposes, as if the amount of such monies had actually been issued to him by way of imprest and upon account: Provided always, that nothing herein contained shall extend or be construed to extend to deprive such person of such relief by application to the Court of Exchequer, as by the said recited Act of the forty-sixth year aforesaid is provided in this behalf.

48 G. 3. c. 49.
52 G. 3. c. 132.
55 G. 3. c. 131.
57 G. 3. c. 41.

XXI. And whereas by certain Acts passed in the reign of his late Majesty King *George* the Third, the Paymaster General of the Forces was required to make up and transmit to the commissioners for auditing the public accounts, for examination, separate accounts of monies received and paid on account of half-pay, pensions on the compassionate list, pensions to the widows of officers of the army, officers allowed to retire on full pay, pensions to wounded officers, pay of general officers not being colonels of regiments, royal bounty to relatives of deceased officers, and pay of adjutants of Local Militia: And whereas in consequence of the reduction of the army at the termination of the late war, and the regulation for issuing half-pay by quarterly instead of half-yearly payments as formerly, and from other causes, the payments on account of the above services have greatly increased in number: And whereas it appears upon examination of the accounts of those services for past years, that from various circumstances connected with the then existing state of those branches of the public service, the rules and regulations prescribing the mode of making such payments, in various instances have not been strictly observed, and the payments have been made upon irregular and imperfect vouchers: And whereas, in consequence of such informalities, considerable delay has arisen and is likely to arise in the settlement of the accounts of the Paymaster General, by reason of the commissioners for auditing the public

No. XLI. 1 & 2 G. IV. c. 121.

accounts not having a discretionary power to admit the documents in question as sufficient vouchers; be it therefore enacted, That it shall and may be lawful for the commissioners for auditing the public accounts, to pass and allow articles of discharge in the accounts of the above mentioned services, according to their judgment and discretion, in all cases where they shall see ground so to do, although the receipts, certificates, affidavits, or declarations may not in all respects be according to the forms prescribed, or where such documents may be otherwise defective, provided it shall appear to them that the payments have been actually made and duly authorised, and that there be no suspicion of fraud.

The commissioners of audit empowered to allow articles of discharge in certain accounts of the Paymaster General.

XXII. And whereas an Act was passed in the fifty-fourth year of His late Majesty, intituled *An Act for the effectual examination of Accounts of the Receipt and Expenditure of the Colonial Revenues in the Islands of* Ceylon, Mauritius, Malta, Trinidad, *and in the Settlements of the* Cape of Good Hope, *for five years:* And whereas it is provided by the said recited Act, that the same should continue in force for five years, and no longer: And whereas by virtue of an Act passed in the fifty-ninth year of His late Majesty, intituled *An Act to continue, until the thirtieth day of* July *One thousand eight hundred and twenty, an Act of the fifty-fourth Year of His present Majesty, for the effectual examination of Accounts of the Receipt and Expenditure of the Colonial Revenues of the Islands of* Ceylon, Mauritius, Malta, Trinidad, *and in the Settlements of the* Cape of Good Hope; and of another Act passed in the first year of His present Majesty, intituled *An Act to continue until the thirtieth day of* July *One thousand eight hundred and twenty-one, an Act of the fifty-fourth year of His late Majesty, for the effectual Examination of the Accounts of the Receipt and Expenditure of the Colonial Revenues in the Islands of* Ceylon, Mauritius, Malta, Trinidad, *and in the Settlements of the* Cape of Good Hope, the said recited Act of the fifty-fourth year of His late Majesty, and all other powers therein contained, were continued and are to be in force until the thirtieth day of *July* One thousand eight hundred and twenty-one: And whereas the system established under and by virtue of the said recited Act of the fifty-fourth year of His late Majesty, and the provision thereby made for the speedy and effectual examination and audit in *Great Britain* of the accounts of the receipt and expenditure of the colonial revenues in the said several last mentioned colonies or settlements, hath been found by experience to be of great public utility, and it is expedient that the same should be made perpetual; be it therefore enacted, That the said recited Act of the fifty-fourth year of the reign of His late Majesty, and all the powers and authorities, clauses and provisions therein contained, except in so far as the same may be varied, altered, or repealed by this Act, shall be and the same are hereby made perpetual.

54 G. 3. c. 184.

59 G. 3. c. 67.

1 G. 4. c. 65.

Recited Act of 54 G. 3. c. 184. made perpetual.

The commissioners and other officers &c. in the office of colonial audit to be continued.

XXIII. And be it further enacted, That the respective persons who at the time of the passing of this Act, by virtue of His Majesty's letters patent now in force, hold the offices of commissioners for the purposes mentioned in the said recited Act of the fifty-fourth year of His late Majesty, and in the said letters patent now in force, shall continue to hold their said offices during His Majesty's pleasure; and the secretary to the said commissioners, and all officers, clerks, and other persons appointed by the commissioners of His Majesty's Treasury, pursuant to the said Act, to aid and assist in the execution thereof, shall continue to hold their respective offices during the pleasure of the said commissioners of His Majesty's Treasury; and the said commissioners, secretary, officers, clerks, and other persons respectively, shall, from and after the thirtieth day of *July* One thousand eight hundred and twenty-one, and during their continuance in the said offices respectively, have, use, and exercise all and every the powers and authorities vested in them under and by virtue of the said recited Act of the fifty-fourth year of His late Majesty, or of the said letters patent, and appointments granted in pursuance thereof, for all or any of the purposes therein expressed, in such and the same manner, and as fully and effectually to all intents

and purposes whatsoever, as if the same powers and authorities had been expressly re-enacted in this Act.

Certain parts of the recited Act of the 54 Geo. III. c. 184. repealed.

XXIV. And be it further enacted, That so much of the said Act of the fifty-fourth year of His late Majesty as empowers the commissioners for auditing the public accounts of *Great Britain* to enter into the examination and investigation of accounts previously examined by the commissioners appointed by virtue of the said act, and whereof a statement shall be transmitted to the said commissioners for auditing the public accounts, for the purpose of preparing the same for declaration, if they shall deem any further examination and investigation thereof unnecessary; and also so much of the said recited act as requires of the said last mentioned commissioners to report their opinion thereon to the Commissioners of His Majesty's Treasury, and to proceed in such examination and investigation; and also so much of the said recited act as authorises and directs the said commissioners for auditing the public accounts, to cause all sums which shall be specified as sums which ought to be set *insuper* in any such statement as aforesaid, and which shall appear to them to be proper to be set *insuper*, to be so set *insuper* on the several persons therein mentioned, or in the warrants accompanying the same, unless upon such further examination as aforesaid it shall not appear to them to be proper that such sums shall be so set *insuper*, shall be and the same are hereby repealed.

The commissioners for auditing the publicaccounts to prepare accounts of colonial expenditure for declaration, without any further examination or investigation thereof.

XXV. And be it further enacted, That whenever the Commissioners of His Majesty's Treasury shall transmit to the Commissioners for auditing the public accounts, a statement of any account which shall have been previously examined by the commissioners appointed under and by virtue of the said recited act of the fifty-fourth year of His late Majesty, together with their warrant to prepare the same for declaration, the said commissioners for auditing the public accounts shall and they are hereby authorised and required in every such case, to make up and prepare for declaration such account, in conformity to such statement or warrant, without any further examination or investigation thereof, or of any part thereof, or of any vouchers relating thereto, and to do all other acts, matters, and things for the declaration of such accounts, and for putting in charge, as a public accountant, every person who may be liable to be put in charge upon such account, in order to the securing and recovering all sums of money due on the same, in like manner as if the said account had been examined, and a statement thereof made by the said commissioners for auditing the public accounts.

Punishing persons refusing to attend or to produce accounts.

XXVI. And be it further enacted, That if any person or persons whatever, who shall be required by the said commissioners for auditing the public accounts, or the commissioners of colonial audit, to attend them for the purpose of being examined upon oath, or who shall be required to produce any accounts, books, returns, vouchers, or other papers and documents relating to any public accounts, before the said commissioners respectively for examination, shall fail to comply with the lawful requisitions of the said respective commissioners, every such person so refusing shall be liable to the payment of such fine to His Majesty, as the Court of Exchequer, on application made to the said Court by the said respective commissioners, or by His Majesty's Attorney General, shall think fit to set and impose; which fine the said Court is hereby authorised and empowered to set and impose accordingly.

Commissariat officers of accounts in his Majesty's colonies or foreign possessions empowered to examine upon oath.

XXVII. And whereas it may tend to establish a more efficient check upon the public expenditure in His Majesty's colonies and foreign possessions, and to a more prompt and effectual examination of the accounts thereof, if the officers there employed from time to time by the Commissioners of His Majesty's Treasury, as Commissaries of Accounts, were empowered under certain restrictions to examine persons upon oath; be it therefore further enacted, That it shall and may be lawful for the commissariat officer who may for the time being be intrusted with the charge of the department for the examination of the accounts of military expenditure, in every such colony or possession, by and with the consent and authority, in each particular case, of the Governor or

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Lieutenant Governor, or person acting as Governor of such colony or possession, and the officer for the time being in the command of His Majesty's forces in such colony or possession, to be signified by warrant under their hands, to call before him any of the officers or other persons employed in the commissariat department, or who may have supplied or furnished, or have been concerned or employed in the supplying or furnishing, any articles, matters and things in or for the use of the commissariat department, or for any military services within such colony or possession, or who may be able in the judgment of the said officer to give any information relating thereto, and in the presence of such governor, lieutenant-governor, or person acting as governor and officer in command of His Majesty's forces as aforesaid, or of such person or persons as may be by them deputed, by warrant under their hands, to attend and be present at such examination, to examine any such officers or persons as hereinbefore mentioned upon oath (which oath such commissariat officer of accounts is hereby authorised, in such presence as aforesaid, to administer,) as to any accounts, supplies, expenses, or charges, or any other matters or things whatsoever, relating to or in any wise connected with the military expenditure within the said colony or possession, or necessary for the elucidation and full understanding of the nature and particulars of such expenditure, and of all supplies furnished for any military service within the said colony or possession, and of all contracts or agreements for supplying the same, and also for the full, strict, and accurate examination of the accounts, charges, and expenses thereof; and also to call for the production of all accounts, books, returns, vouchers, and papers of every description relating thereto; and in case of the failure by any person being an officer, or employed in the commissariat department, to comply with any such the lawful requisition of the said commissariat officer of accounts, every such person so refusing shall be dismissed from his situation or employment, and be incapable of being again employed in the service of His Majesty.

Persons giving false evidence to be guilty of perjury.

XXVIII. And be it further enacted, That in case any person in the course of any examination upon oath, before any such commissariat officers of accounts as aforesaid, under the provisions of this Act, shall wilfully and corruptly give false evidence, such person so offending, and being thereof duly convicted, shall be, and is hereby declared to be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

Persons neglecting or refusing to appear to be punished.

XXIX. And be it further enacted, That if any person or persons summoned to appear before such commissariat officer of accounts, shall neglect or refuse to appear before such commissariat officer of accounts as aforesaid, or to bring or produce any accounts, books, certificates, warrants, muniments, receipts, bills of exchange, notes, or other papers whatever, that shall be in his, her, or their possession or custody, or in the custody or possession of any other person or persons for him, her, or them, or shall refuse to answer to such commissariat officer of accounts any question on oath touching or concerning any matter or thing relating to any such accounts, books, certificates, warrants, muniments, receipts, bills of exchange, or other papers, or shall refuse to answer any question on oath relating to any matter or thing in any wise respecting the expenditure of the public money enquired of by the said commissariat officers of accounts in the execution of his office, then and in every such case it shall be lawful for the said commissariat officer of accounts, with such consent and under such authority and as hereinbefore is mentioned, to be signified, to make or cause to be made summary application to any court or courts of justice in any such colony or possession as aforesaid in that behalf, if any such court shall be then sitting, or if no such court shall be then sitting, then such application shall be made to the Chief Justice or other judge of any such court, and every such court, or chief justice, or judge respectively, is hereby authorised and strictly required, on such application so made as aforesaid, to issue such special process against the person or persons who shall have been guilty

of such default as aforesaid, as such court or chief justice or judge may deem necessary, to compel the appearance before such commissariat officer of accounts of any such person or persons, or the production of any such accounts, books, certificates, warrants, muniments, receipts, bills of exchange, or other papers as aforesaid, or to compel such person or persons to answer any such question or questions as aforesaid; and such commissariat officer of accounts may thereupon proceed upon such special process, by imprisonment of the body of any such person as aforesaid, in like manner as any court or courts of record within this kingdom, having competent authority for that purpose, may proceed against any person or persons for any contempt committed against the authority of any such court.

Account of the increase or deficiency between the income and expenditure to be laid annually before parliament.

XXX. And be it further enacted, That from and after the fifth day of *January* One thousand eight hundred and twenty-two, the Lords Commissioners for executing the office of Lord High Treasurer for the time being, shall annually cause an account of the increase or deficiency between the income and expenditure of the United Kingdom, for one year, ending on the fifth day of *January* in each year, and that the said Lords Commissioners shall, in each year, cause such account to be laid before both houses of Parliament, on or before the twenty-fifth day of *March* in each year, if Parliament shall be then sitting, or if Parliament shall not then be sitting, within fourteen days after the next sitting of Parliament.

# PART IV.

## CLASS II.

### *Attornies* and other Officers.—Prochein Amy.*

**[ No. I. ] 20 Henry III. St. Merton, c. 10.—Attornies allowed to make suit to several Courts.**

No. I. 20 Hen. III. c. 10.

'IT is provided and granted, that every freeman, which oweth suit to the county, trithing, hundred, and wapentake, or to the Court of his Lord, may freely make his attorney to do those suits for him:'

**[ No. II. ] 6 Edward I. St. Gloucester, c. 8.—No suit for goods in the King's Courts under forty shillings. Attorney may be made where an appeal lieth not. The defendant being essoined shall bring in his warrant.**

[Vide ante, Class 1. No. 3.]

**[ No. III. ] 13 Edward I. st. 1. (Westminster 2.) c. 10.—At what time writs shall be delivered for suits depending before Justices in Eyre. Any person may make a general attorney.**

13 Edward I. c. 10. Delivering of writs for suits depending before Justices in eyre.

"WHEREAS in the circuit of Justices it was proclaimed, That all such as would deliver writs, should deliver them within a certain time, after which no writ should be received; many trusting upon the same, and tarrying until the said time, and no writ served upon them, departed by licence of the said justices; after whose departure their adversaries, perceiving their absence, delivered their writs in wax, which sometimes by fraud, and sometimes for rewards, be received of the Sheriff, and they, that thought to have departed quiet, lose their lands." 'For the remedy of such fraud from henceforth, the King hath ordained, That the justices in their circuits shall appoint a time of fifteen days, or a month, or a time more or less (after as the county shall happen to be more or less) within which time it shall be openly proclaimed, that all such as will deliver their writs, shall deliver them before the same time; and when the time cometh, the Sheriff shall certify the Chief Justice in Eyre how many writs he hath, and what, and that no writ be received after the same time; and if it be received, the process issuing thereupon shall be of none effect; but only that a writ abated any time during the circuit may be amended; also writs of dower of men that died within the summons of the circuit, Assises of *Darrein presentment*, *Quare impedit*, of churches vacant within the foresaid summons, shall be received at any time before the departure of the justices; also writs of *Novel disseisin*, at what time soever the disseisin was done, shall be received *in the circuit of Justices*. Our Lord the King of his special grace granteth, That such as have land in divers shires where the justices make their circuit, and that have land in shires where the justices have no circuit, that fear to be impleaded and are impleaded of other lands in shires where they have no circuit, as before the justices at *Westminster*, or in the King's Bench, or before

Any person may make a general attorney.

* By 5 George II. c. 18. sec. 2, attornies cannot act as Justices of Peace. See the Statute, Part VI. Title Justices of Peace.---By 12 George I. c. 29, Persons convicted of perjury, or forgery, practising as attornies, are subject to transportation. See the Statute in the next Class.---The Acts respecting the duties on articles of clerkship, and on certificates of attornies, do not fall within the plan of the present Work.

'justices assigned to take assises, or in any county before Sheriffs, or 'in any Court Baron, may make a general attorney to sue for them in 'all pleas in the circuit of justices moved or to be moved for them, or 'against them during the circuit; which attorney or attornies shall 'have full power in all pleas moved during the circuit, until the plea 'be determined, or that his master remove him; yet shall they not be 'excused thereby, but they shall be put in juries and assises before the 'same Justices.'

No. III. 13 Edw. I. c. 10.

## [ No. IV. ] 13 Edward I. st. 1. (Westminster 2.) c. 15.—An infant eloined may sue by *Prochein Amy*.

'IN every case whereas such as be within age may sue, it is ordained, 'That if such within age be eloined, so that they cannot sue personally, their next friends shall be admitted to sue for them.'

13 Edward I. c. 15. Enfant's Suit.

## [ No. V. ] 12 Edward II. stat. 1. c. 1.—Tenants in assise of *Novel disseisin* may make atturnies.

"FIRST, for divers mischiefs that have been because tenants in assise "of *Novel disseisin* might not make atturnies heretofore:" 'it is 'agreed that the tenants in assise of *Novel disseisin* from henceforth 'may make atturnies. Yet the King intendeth not hereby that the 'tenants and defendants in assises of *Novel disseisin* should not plead by 'bailiffs, if they will, as they have used to do heretofore.'

12 Edward II. c. 1.

Pleading by Bailiffs.

## [ No. VI. ] 4 Henry IV. c. 18.—The punishment of an attorney found in default.

"ITEM, For sundry damages and mischiefs that have ensued before "this time to divers persons of the realm by a great number of "attornies, ignorant and not learned in the law, as they were wont to "be before this time;" 'it is ordained and stablished, That all the 'attornies shall be examined by the justices, and by their discretions 'their names put in the roll, and they that be good and vertuous, and 'of good fame, shall be received and sworn well and truly to serve in 'their offices, and especially that they make no suit in a foreign county; 'and the other attornies shall be put out by the discretion of the said 'Justices; and that their masters, for whom they were attornies, be 'warned to take others in their places, so that in the mean time no 'damage nor prejudice come to their said masters. And if any of the 'said attornies do die, or do cease, the Justices for the time being by 'their discretion shall make another in his place, which is a virtuous 'man and learned, and sworn in the same manner as afore is said; and 'if any such attorney be hereafter notoriously found in any default of 'record, or otherwise, he shall forswear the Court, and never after be 'received to make any suit in any Court of the King. And that this 'ordinance be holden in the Exchequer after the discretion of the Treasurer, and of the Barons there.'

4 Henry IV. c. 18. What sort of men shall be Attornies.

## [ No. VII. ] 4 Henry IV. c. 19.—No officer of a lord of a franchise shall be attorney in the same.

'ITEM, it is ordained, that no steward, bailiff, nor minister of lords of 'franchises, which have return of writs, be attorney in any plea within 'the franchise or bailiwick whereof he is or shall be officer or minister, 'in any time to come.'

4 Henry IV. c. 19.

## [ No. VIII. ] 7 Henry IV. c. 13.—Impotent persons that be outlawed may make attornies.

No. VIII. 7 Hen. IV. c. 13.

"ITEM, Whereas many of the King's liege people be outlawed, and "many waved, by erroneous process in law, and be so impotent in "their bodies, by divers maladies and infirmities, that they cannot come "in their proper persons before the King in his bench, there to make "their suit to reverse such erroneous process;" 'it is ordained and 'established, That every Justice of the one bench and of the other, 'and also the chief Baron of the Exchequer, shall have power to ex-'amine the same persons, having such malady and diseases openly known, 'and thereupon may the same Justices and Baron, and every of them, 'by their discretion, record their attorney in this case. Provided al-'ways, That in the writ of *Capias ad satisfaciendum* the common law 'shall hold place.'

Capias ad satisfaciendum.

## [ No. IX. ] 1 Henry V. c. 4.—Sheriffs' bailiffs shall not be in the same office in three years after. Sheriffs' officers shall not be attornies.

1 Henry V. c. 4.

"ITEM, For as much as the King's liege people dare not pursue or "complain of the extortions and of the oppressions to them done "by the officers of sheriffs, that is to say, by under-sheriffs, clerks of "sheriffs, receivers and bailiffs of sheriffs, because that the said "under-sheriffs, clerks, receivers, and bailiffs be continually, from year "to year, abiding with the sheriffs interchangeably out of one office "into another;" 'our Lord the King, by the advice and assent afore-'said, and at the request of the said Commons, hath ordained and 'established, That they which be bailiffs of sheriffs by one year shall 'be in no such office by three years next following, except bailiffs of 'sheriffs which be inheritable in their sheriffwicks. And that no un-'dersheriff, sheriff's clerk, receiver, nor sheriff's bailiff, be attorney in 'the King's Courts during the time that he is in office with any such 'sheriff.'

## [ No. X. ] 33 Henry VI. c. 7.—How many attornies may be in *Norfolk*, how many in *Suffolk*, and in *Norwich*.

33 Henry VI. c. 7.

A Practice of contentious attornies, to stir up suits for their private profits.

ITEM, Whereas of time not long past, within the City of *Norwich*, and the Counties of *Norfolk* and *Suffolk*, there were no more but six or eight attornies at the most (coming) to the King's Court, in which time great tranquillity reigned in the said city and counties, and little trouble or vexation was made by untrue or foreign suits; and now so it is in the said city and counties there be fourscore attornies, or more, the more part of them having no other thing to live upon, but only his gain by (the practice of) attorneyship, and also the more part of them not being of sufficient knowledge to be an attorney which (come) to every fair, market, and other places, where is any assembly of people exhorting, procuring, moving, and inciting the people to attempt untrue and foreign suits for small trespasses, little offences, and small sums of debt whose actions be triable and determinable in Court Barons; whereby proceed many suits, more of evil will and malice than of the truth of the thing, to the manifold vexation and no little damage of the inhabitants of the said city and counties, and also to the perpetual (diminution) of all the Court Barons in the said counties unless convenient remedy be provided in this behalf: the foresaid Lord the King considering the premises by the advice, assent, and authority aforesaid hath ordained and established, That at all times from henceforth there shall be but six common attornies in the said county of *Norfolk*, and six common attornies in the said county of *Suffolk*, and two common attornies in the said City of *Norwich*, to be attornies in the Courts of Record; and that all the said fourteen attornies shall be elected and admitted by the two Chief Justices of our Lord the King, for the time being, of the most sufficient and best instructed by their discretions. And that the election and admission of all attornies which shall be elected and

There shall be but six common Attornies in *Norfolk*, six in *Suffolk*, and two in *Norwich*.

admitted by the said justices for the time being above the said number in the said county shall be void, and of no authority nor record; and if any person or persons usurp, or presume to be attorney in Courts of Record in the said counties or city otherwise than before is specified, and that found by inquisition taken before the Justices of Peace in the said city or counties which shall have power by virtue of this ordinance, to inquire thereof in their sessions, or in any other manner lawfully proved, that then he or they that so presumed, if they be lawfully convict, shall forfeit 20*l.* as often as he or they be so convict; the one half thereof to be taken to the King's use, and the other half to his use which for the same will sue; and he that therefore will sue shall have an action of debt against any such person which so presumeth to be attorney, and such process (for recovery of the same), as lieth an action of debt at the common law upon an obligation. Provided always, That the said ordinance begin, and first take effect at the Feast of *Easter* next coming, and not before, if the same ordinance seem reasonable to the justices.

No. X. 33 Hen. VI. c. 7.

Justices of Peace shall have Authority to inquire of Offenders.

The Forfeiture of Offenders.

Qu. If in Use. Rast. Ent. 29. c.

## [ No. XI. ] 32 Henry VIII. c. 30.—Mispleadings, jeofails.

32 Henry VIII. c. 30.

This Act extendeth to all Writs of Mandamus, &c. by 9 Ann. c. 20. § 1.

'FORASMUCH as the party plaintiffs and demandants in all manner of actions and suits, as well real as personal, at the common law of this realm, before this time have been greatly delayed and hindered in their suits and demands, by reason of the crafty, subtle, and negligent pleadings of the plaintiffs or demandants, defendants or tenants, where any action or demand hath been sued, had, or made, as well in ministering of their declarations and bars, as also in their replications, rejoinders, rebutters, joining of issues, and other pleadings, to the great hurry, delay, and hindrance of the said plaintiffs or demandants, or to the vexation of the defendants or tenants; (2) insomuch that when the issues joined in the same actions between the parties to the same hath been tried and found by the verdict of twelve or more indifferent persons, for the said plaintiffs or demandants, or for the tenants or defendants, and the justices ready to give judgment for the said parties for whom the same issue was found, the same parties have been compelled by the course and order of the common law of this realm afore this time, to replead, and the said verdicts so given, as is afore rehearsed, to be taken as void and of none effect; sometime because the issues have been misjoined, and jeofail, and sometime by taking advantages of the parties' own mispleading, or in the pursuing, mis-continuing or discontinuing of process of any of the parties, and for divers other causes, the which is thought as well a great slander to the said common law of this realm, and to the ministers of the same, as also a plain delay and hindrance unto the said parties, in that they should not have their judgments when the issue hath been found and tried as is aforesaid, to their great costs and charges:' (3) Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present parliament assembled, and by the authority of the same, that from henceforth if any issue be tried by the oath of twelve or more indifferent men, for the party, plaintiff or demandant, or for the party of the tenant or defendant, in any manner of action or suit at the common law of this realm, in any of the King's Courts of Record, that then the Justice or Justices by whom judgment thereof ought to be given, shall proceed and give judgment in the same; (4) any mispleading, lack of colour, insufficient pleading or jeofail, (5) or any miscontinuance or discontinuance, or misconveying of process, (6) misjoining of the issue, lack of warrant of attorney for the party against whom the same issue shall happen to be tried, (7) or any other default or negligence of any of the parties, their counsellors or attornies, had or made to the contrary notwithstanding; (8) and the said judgments thereof, so to be had and given, shall stand in full strength and force to all intents and purposes, according to the said verdict, without any reversal or undoing of the same by writ of error,

The several inconveniences which have heretofore followed by delays in Suits.

After an Issue tried, there shall be judgment given, notwithstanding any jeofail or mispleading.

No. XI. 32 H. VIII. c. 30.

When an attorney shall enter his warrant in Court.

or of false judgment, in like form as though no such default or negligence had never been had or committed.

II. Provided alway, and be it enacted by the authority aforesaid, in avoiding of errors and other great inconveniencies that daily do fortune to arise and grow in the King's Courts of Record at *Westminster*, through the negligence of attornies, because they deliver not their warrants of attorney in such actions and suits, wherein they be named attorney, according to the laws of this realm, (2) That all and every such person and persons, which shall fortune hereafter to be attorney to or for any other person or persons, being demandant or plaintiff, tenant or defendant in any action or suit at any time hereafter commenced or taken in any of the King's said Courts, and plead to an issue in the same action or suit, that then the same attornies, and every of them, from time to time shall deliver, or cause to be delivered, his or their sufficient and lawful warrant of attorney, to be entered of record, for every of the said actions or suits wherein they be named attornies, to the officer or his deputy, ordained for the receipt and entering thereof, in the same term when the said issue is entered of record in the said Court, or afore, (3) upon pain of forfeiting unto our said Sovereign Lord *x. l.* sterling for every default for not delivering of the said warrant of attorney.

Continued by 33 H. 8. c. 17. 37 H. 8. c. 23. Made perpetual by 2 & 3 Ed. 6. c. 32. and 5 Geo. 1. c. 13.

III. And also further to suffer such imprisonment, as by the discretion of the Justices of the Court for the time being, where any such default shall fortune to be had or made, shall be thought convenient. This present Act, with the proviso, to endure till the last day of the next Parliament.

## [ No. XII. ] 29 Elizabeth, c. 5.—An Act for the continuance and perfecting of divers Statutes.

29 Elizabeth, c. 5.

'XXI. PROVIDED always, That whereas divers her Majesty's loving subjects dwelling in the remote parts of this realm are many 'times maliciously troubled upon informations and suits, exhibited in the 'Courts of the King's Bench, Common Pleas, and Exchequer, upon penal 'statutes, and are drawn up upon process out of the countries where 'they dwell, and driven to attend and put in bail, to their great trouble 'and undoings;' (2) For reformation whereof, be it enacted that if any person or persons shall be sued or informed against, upon any penal law in any the several Courts of the King's Bench, Common Pleas or Exchequer, where such person or persons are bailable by law, or where by the leave or favour of the court such person or persons may appear by attorney, that in all and every such cases the person or persons so to be impleaded or sued, shall and may at the day and time contained in the first process served for his appearance appear by attorney of the same court where the process is returnable, to answer and defend the same, and not be urged to personal appearance, or to put in bail for the answering of such suit; any former law, custom or usage to the contrary notwithstanding.

The defendant in suits upon penal statutes may appear by attorney.

This branch extends not to aliens.

## [ No. XIII. ] 31 Elizabeth, c. 10.—An Act for the continuance and perfecting of divers Statutes.

31 Elizabeth, c. 10.

29 Eliz. c. 5. § 14.

XX. WHERE in the Parliament now last past holden at *Westminster*, an Act was then made, intituled '"An Act for the con'tinuance and perfecting of divers statutes;" in the end of which Act 'one proviso is contained in these words following, *viz.* Provided al'ways that whereas divers her Majesty's loving subjects dwelling in 'the remote places of this realm are many times maliciously troubled 'upon informations and suits, exhibited in the Courts of King's Bench, 'Common Pleas, and Exchequer, upon penal statutes, and are drawn 'up upon process out of the countries where they dwell, and driven 'to attend and put in bail, to their great troubles and undoings;

No. XIII. 31 Elizabeth c. 10.

'(2) For reformation whereof, be it enacted, that if any person or 'persons shall be sued or informed against upon any penal law, in 'any of the said Courts of the King's Bench and Common Pleas, or 'Exchequer, where such person or persons are bailable by law, or 'where by the law or favour of the Court such person or persons may 'appear by attorney, that in all and every such case the person or 'persons so to be impleaded or sued should and might at the day 'and time contained in the first process served for his appearance, 'appear by attorney of the same Court where the process is returnable, 'to answer and defend the same, and not to be urged to personal appear-'ance, or to put in bail for the answering of such suit; any former 'law, custom or usage to the contrary notwithstanding;' (3) Be it now enacted by the authority of this present parliament, that the same branch of the said Act shall extend, and shall be interpreted, expounded, and understood to extend, only to the natural subjects born or to be born within the dominions of the Queen's Majesty, her heirs and successors, and to persons made free denizens, and to no others; any thing therein contained to the contrary in any wise notwithstanding.

The statute of 29 Eliz. c. 5. touching appearing by attorney in suits upon penal laws shall extend only to natural born subjects or free denizens.

## [ No. XIV. ] 3 James I. c. 7.—An Act to reform the multitudes and misdemeanors of attornies and solicitors at law, and to avoid unnecessary suits and charges in law.

3 James I. c. 7. An Attorney shall have a ticket of the money which he giveth for fees, &c.

'FOR that through the abuse of sundry attornies and solicitors by 'charging their clients with excessive fees, and other unnecessary 'demands, such as were not, ne ought by them to have been employed or 'demanded, whereby the subjects grow to be overmuch burthened, and 'the practice of the just and honest Serjeant and Counsellor at Law 'greatly slandered: And for that to work the private gain of such at-'tornies and solicitors, the client is oftentimes extraordinarily de-'layed;' Be it enacted by the authority of this present parliament, that no attorney, solicitor, or servant to any, shall be allowed from his client or master, of or for any fee given to any Serjeant or Counsellor at law, or of or for any sum or sums of money given for copies to any Clerk or Clerks or Officers in any Court or Courts of Record at *Westminster*, (1) unless he have a ticket subscribed with the hand and name of the same Serjeant or Counsellor, Clerk or Clerks, or Officers aforesaid, testifying how much he hath received for his fee, or given or paid for copies, and at what time, and how often: And that all attornies and solicitors shall give a true bill unto their masters (2) or clients, or their assigns, of all other charges concerning the suits which they have for them, subscribed with his own hand and name, before such time as they or any of them shall charge their clients with any the same fees or charges: And that if the attorney or solicitor do or shall willingly delay his client's suit to work his own gain, or demand by his bill any other sums of money, or allowance upon his account of any money which he hath not laid out or disbursed, that in every such case the party grieved shall have his action against such attorney or solicitor, and recover therein costs and treble damages, and the said attorney and solicitor shall be discharged from thenceforth from being an attorney or solicitor any more.

A Bill of Charges.

An Attorney delaying his client's suit, or demanding more than is due.

II. And to avoid the infinite numbers of solicitors and attornies, be it enacted by the authority of this present parliament, that none shall from henceforth be admitted attornies in any the King's Courts of Record aforesaid, but such as have been brought up in the same courts, or otherwise well practised in soliciting of causes, and have been found

Who only shall be Attornies or Solicitors.

(1) The Statute does not extend to business done in inferior Courts, Brickwood *v.* Farnshaw, Carth. 147.

(2) Business done by an agent for an attorney, is not within the Act; Jones *v.* Price, 1 Selw. N. P. 149; Bridges *v.* Francis, Peake N. P. C. 1.

No. XIV. 3 James I. c. 7.

No following of a suit in another's name.

by their dealings to be skilful and of honest disposition: And that none to be suffered to solicit any cause or causes in any of the courts aforesaid, but only such as are known to be men of sufficient and honest disposition: And that no attorney shall admit any other to follow any suit in his name; upon pain that both the attorney and he that followeth any such suit in his name, shall each of them forfeit for such offence twenty pounds: the one moiety whereof to our Sovereign Lord the King, his heirs and successors, and the other moiety to the party grieved to be recovered in any the said Courts of Record aforesaid, by original writ of debt, bill, plaint, or information, wherein no manner of essoin, wager of law, or protection shall be allowed: And that the attorney in such case shall be excluded from being an attorney for ever thereafter.

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## [ No. XV. ] 2 George II. c. 23.—An Act for the better regulation of attornies and solicitors.

2 George II. c. 23.

FOR the better regulation of attornies and solicitors, practising in any of the Courts of Law or Equity, in that part of *Great Britain* called *England*, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That no person from and after the first day of *December* One thousand seven hundred and thirty, shall be permitted to act as an attorney, or to sue out any writ or process, or to commence, carry on or defend any action or actions, or any other proceedings, either before or after judgment obtained, in the name or names of any person or persons in his Majesty's Court of King's Bench, Common Pleas, or Exchequer, or Duchy of *Lancaster*, or in any of his Majesty's Courts of Great Sessions in *Wales*, or in any of the courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, or in any other Court of Record in that part of *Great Britain* called *England*, wherein attornies have been accustomably admitted and sworn, unless such person shall take the oath hereinafter directed and appointed to be taken by attornies, and shall also be admitted and inrolled on or before the said first day of *December* One thousand seven hundred and thirty, in such of the said courts where he shall act as an attorney, or shall be sworn, admitted and inrolled in the said respective courts after the said first day of *December* One thousand seven hundred and thirty, in such manner as is hereinafter directed.

No person to be admitted an attorney unless he take the oath, and be inrolled.

Judges to examine into his capacity.

II. And be it further enacted by the authority aforesaid, That the judges of the said courts respectively, or any one or more of them, shall, and they are hereby authorised and required, before they shall admit such person to take the said oath, to examine and enquire, by such ways and means as they shall think proper, touching his fitness and capacity to act as an attorney; and if such judge or judges respectively shall be thereby satisfied, that such person is duly qualified to be admitted to act as an attorney, then, and not otherwise, the said judge or judges of the said courts respectively, shall, and they are hereby authorised to administer to such persons the oath hereinafter directed to be taken by attornies, and, after such oath taken, to cause him to be admitted an attorney of such court respectively, and his name to be inrolled as an attorney of such court respectively, without any fee or reward, other than one shilling for administering such oath; which admission shall be written on parchment in the *English* tongue, in a common legible hand, and signed by such judge or judges respectively, whereon the lawful stamp shall be first impressed, and shall be delivered to such person so admitted.

None to act as a solicitor, unless he take the oath, and be inrolled.

III. And be it further enacted by the authority aforesaid, That no person from and after the first day of *December*, in the year of our Lord One thousand seven hundred and thirty, shall be permitted to act as a solicitor, or to sue out any writ or process, or to commence, carry on, solicit or defend any suit, or any proceedings, in the name of any other

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person, in any court of equity, either in His Majesty's High Court of Chancery, Court of Equity in the Exchequer Chamber, Court of the Duchy Chamber of *Lancaster* at *Westminster*, or Courts of the counties palatine of *Chester*, *Lancaster*, or *Durham*, or of the Great Sessions in *Wales*, or in any other inferior court of equity in that part of *Great Britain* called *England*, unless such person shall take the oath hereinafter directed and appointed to be taken by solicitors in courts of equity, and shall also be admitted and inrolled on or before the said first day of *December* One thousand seven hundred and thirty, in such of the said courts of equity where he shall act as a solicitor, or shall be sworn, admitted and inrolled after the said first day of *December*, in such manner as is hereinafter directed.

Court of equity to examine.

IV. And be it further enacted by the authority aforesaid, That the Master of the Rolls, or two of the Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of *Lancaster*, and the judges of the said other courts of equity for the time being respectively, or any one or more of them, shall, and they are hereby authorised and required, before he or they shall admit any person to take the said oath, to examine and inquire, by such ways and means as he or they shall think proper, touching his fitness and capacity to act as a solicitor in such courts of equity respectively; and if the said Master of the Rolls, or two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of *Lancaster*, or the judges of the said other courts of equity for the time being, or any one or more of them respectively, shall be thereby satisfied that such person is duly qualified to be admitted to act as a solicitor in such court of equity, then, and not otherwise, the said Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of *Lancaster*, and the Judges of the said other courts of equity for the time being respectively, or any one or more of them, shall, and they are hereby authorised to administer to such person the oath hereinafter directed to be taken by solicitors, and, after such oath taken, to cause him to be admitted a solicitor in such court of equity, and his name to be inrolled as a solicitor in such court, without any fee or reward, other than one shilling for administering such oath, which admission shall be written on parchment in *English*, and in a common legible hand, and signed by the Master of the Rolls, two Masters of the Chancery, the Barons of the Exchequer, the Chancellor of the Duchy of *Lancaster*, and the Judges of the said other courts of equity respectively, or such of them who shall admit such person to be a solicitor, whereon a treble forty shillings' stamp shall be first impressed, and shall be delivered to the person so admitted.

None to act as an attorney unless he has served a clerkship, and been admitted.

V. And be it further enacted by the authority aforesaid, That from and after the first day of *December* One thousand seven hundred and thirty, no person, who shall not before the said first day of *December* have been sworn, admitted and inrolled pursuant to the directions of this Act, shall be permitted to act as an attorney, or to sue out any writ or process, or to commence, carry on or defend any action or actions, or any proceedings, either before or after judgment obtained, in the name or names of any other person or persons, in any of the courts of law aforesaid, unless such person shall have been bound, by contract in writing, to serve as a clerk for and during the space of five years, to an attorney duly and legally sworn and admitted, as hereinbefore is directed, in some or one of the courts hereinbefore mentioned; and that such person, for and during the said term of five years, shall have continued (1) in such service; and also unless such person, after the expiration of the said term of five years, shall be examined, sworn, admitted and inrolled, in the same manner as the persons who shall be admitted

(1) This provision is not complied with by the clerk serving part of the time with another attorney by his original master's consent; Ex parte Hill, 7 T. R. 456.

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attornies of the said courts, are hereinbefore required to be examined, sworn, admitted and inrolled.

Judges, before they admit them to take the oath, to examine their fitness.

VI. And be it further enacted by the authority aforesaid, That the judges of the said Courts respectively, or any one or more of them, shall, and they are hereby authorised and required, before they shall admit such person to take the said oath, to examine and inquire, by such ways and means as they shall think proper, touching his fitness and capacity to act as an attorney; and if such judge or judges respectively shall be thereby satisfied, that such person is duly qualified to be admitted to act as an attorney, then, and not otherwise, the said judge or judges of the said courts respectively shall, and they are hereby authorised to administer, in open court, to such person, the oath hereinafter directed to be taken by attornies, and, after such oath taken, to cause him to be admitted an attorney in such court, and his name to be inrolled as an attorney in such court, without any fee or reward, other than one shilling for administering such oath, which admission shall be written on parchment in the *English* tongue, in a common legible hand, and signed by such judge or judges respectively, whereon the lawful stamps shall be first impressed, and shall be delivered to the person so admitted.

None to act as a solicitor before he has served a clerkship, and been admitted.

VII. And be it further enacted by the authority aforesaid, That from and after the first day of *December* One thousand seven hundred and thirty, no person, who shall not, before the said first day of *December*, have been sworn, admitted, and inrolled, pursuant to the directions of this Act, shall be permitted to act as a solicitor, to sue out any writ or process, or to commence, carry on, solicit, or defend, any suit or proceedings in the name or names of any other person or persons, in any of the courts of equity aforesaid, unless such person shall have been bound, by contract in writing, to serve as a clerk for and during the space of five years to a solicitor, duly and legally sworn and admitted, as hereinbefore is directed, in some or one of the courts of equity aforesaid, and for and during the said term of five years shall have continued in such service; and also unless such person, after the expiration of the said term of five years, shall be examined, sworn, admitted, and inrolled, in the same manner, as persons who shall be admitted solicitors in the courts of equity aforesaid, are hereinbefore required to be examined, sworn, admitted, and inrolled.

Judges of the courts of equity to examine solicitors.

VIII. And be it further enacted by the authority aforesaid, That the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of *Lancaster*, and the judges of the said other courts of equity for the time being respectively, or any one or more of them, shall, and they are hereby authorised and required, before he or they shall admit such person to take the said oath, to examine and inquire by such ways and means as he or they shall think proper touching his fitness and capacity to act as a solicitor in courts of equity; and if the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of *Lancaster*, and such Judge or Judges of the said other Courts of Equity for the time being respectively, shall be thereby satisfied, that such person is duly qualified to be admitted to act as a solicitor in such court of equity, then, and not otherwise, the said Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the duchy of *Lancaster*, and the said Judges of the said other Courts of Equity for the time being respectively, or any one or more of them, shall, and they are hereby authorised to administer, in open court, to such person the oath hereinafter directed to be taken by solicitors, and, after such oath taken, to cause him to be admitted a solicitor in such court of equity, and his name to be inrolled as a solicitor in such court, without any fee or reward, other than one shilling for administering such oath; which admission shall be written on parchment in the *English* tongue, and in a common legible hand, and signed by the Master of the Rolls, two Masters of the Chancery, the Barons of the Excho-

quer, the Chancellor of the Duchy of *Lancaster*, and the Judges of the said other Courts of Equity respectively, or such of them who shall admit such person to be a solicitor, whereon a treble forty shillings' stamp shall be first impressed, and shall be delivered to the person so admitted.

Not to exclude persons from beingadmitted, who have, before March 25, 1729, been bound for four years.

IX. Provided always, and it is hereby enacted, That this Act, or any thing hereinbefore expressed and contained, shall not be taken or construed to exclude any person from being sworn, admitted, and inrolled, to be an attorney in any of the courts of law aforesaid, who hath on or before the twenty-fifth day of *March* One thousand seven hundred and twenty-nine, been bound by contract in writing to serve as a clerk to any attorney, or person practising as such, in some or one of the courts of law aforesaid, for any term not less than four years; or from being sworn, admitted, and inrolled, to be a solicitor in any of the courts of equity aforesaid, who hath, on or before the said twenty-fifth day of *March*, One thousand seven hundred and twenty-nine, been bound by contract in writing, to serve as a clerk to any person practising as a solicitor in any of the courts of equity aforesaid, for any term not less than four years; so as such writing, in case any sum of money hath been paid or given for or in respect of such clerkship, hath the legal stamp thereon impressed, and shall be registered in the stamp-office on or before the twenty-fifth day of *March* One thousand seven hundred and thirty; but that any person having been bound to serve as a clerk to any attorney, or person practising as such, and having served as aforesaid, may, after the expiration of the said term of four years, be examined, sworn, admitted and inrolled, to be an attorney of any of the courts of law aforesaid, and any person, having been bound to serve as a clerk to any person practising as a solicitor, and having served as aforesaid, may, after the expiration of the said term of four years, be examined, sworn, admitted and inrolled, to be a solicitor in any of the courts of equity aforesaid, for the same fee, and in the same manner, as the persons who shall be admitted attornies or solicitors, are hereinbefore required to be examined, sworn, admitted and inrolled respectively; any thing in this Act contained to the contrary notwithstanding.

Attornies with consent of an attorney of another court, may sue out writs, &c. in such court.

X. Provided also, and it is hereby further enacted, That it may be lawful, from and after the said first day of *December*, One thousand seven hundred and thirty, for any person who shall be sworn, admitted and inrolled, to be an attorney in any of the said Courts of King's Bench, Common Pleas, Exchequer, Courts of Great Sessions, Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or who shall be sworn, admitted and inrolled, to be a solicitor in the said Court of Chancery, Court of Equity in the Exchequer Chamber, Court of the Duchy Chamber of *Lancaster* at *Westminster*, Courts of Equity of the counties palatine of *Chester*, *Lancaster*, and *Durham*, and of the Great Sessions in *Wales*, or any of them, as hereinbefore is directed, by and with the consent and permission of any attorney in any of the said other Courts of Record at *Westminster*, Courts of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, Courts of Exchequer at *Chester*, and Courts of the Great Sessions in *Wales*; such consent being in writing signed by such attorney, and in the name of such attorney to sue out any writ or process, or to commence, carry on, prosecute or defend any action or actions, or any other proceedings in such court notwithstanding such person is not sworn, or admitted to be an attorney of such court; any law or statute to the contrary notwithstanding.

XI. Provided likewise, and it is hereby further enacted and declared, That nothing in this Act contained shall extend either to require or authorise any judge or judges of any court of record to swear, admit or inroll, any more or greater number of persons to be attornies of such court, than by the ancient usage and custom of such court hath been heretofore allowed.

Clerks on deaths of their masters, &c. may be turned over.

XII. Provided also, and it it is hereby further enacted, That if any attorney or solicitor, with and to whom any person hath been or shall be bound by contract in writing as aforesaid, to serve as a clerk for the

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term of five years, or four years respectively, shall happen to die before the expiration of the said five years, or four years, or if such contract shall, by mutual consent of the parties, be vacated, or in case such clerk be legally discharged by any rule or order of the court wherein such attorney or solicitor shall practise, before the expiration of the said five years, or four years, then, and in any of the said cases, if such clerk shall by contract in writing be obliged to serve, and shall accordingly serve as a clerk to any other attorney or solicitor respectively, who shall be sworn, admitted and inrolled as before directed, during the residue of the said term of five years, or four years, respectively, then such service shall be deemed and taken to be as good and effectual as if such clerk had continued to serve as a clerk for the term of five years, or four years, to the same person to whom he was originally bound by contract in writing as aforesaid.

Attornies before admission to take the following oath.

XIII. And it is hereby further enacted by the authority aforesaid, That every person who shall, pursuant to this Act, be admitted and inrolled to be an attorney in the said Courts of King's Bench, Common Pleas, Exchequer, Great Sessions in *Wales*, counties palatine of *Chester*, *Lancaster*, and *Durham*, or any inferior courts of record, wherein attornies have been accustomably admitted and sworn, shall before he is admitted and inrolled as aforesaid, take and subscribe the oath following, instead of the oath heretofore usually taken by the attornies of such Courts respectively.

'I *A. B.* do swear, That I will truly and honestly demean myself in 'the practice of an Attorney, according to the best of my knowledge 'and ability.'

So help me God.

Solicitors to take the oath following.

XIV. And it is hereby further enacted by the authority aforesaid, That every person who shall, pursuant to this Act, be admitted and inrolled to be a solicitor in the said High Court of Chancery, or in any of the other courts of equity aforesaid, shall, before he shall be so admitted and inrolled, take and subscribe the oath following; *viz.*

'I *A. B.* do swear, That I will truly and honestly demean myself in 'the practice of a Solicitor, according to the best of my knowledge 'and ability.'

So help me God.

No more than two clerks at one time.

XV. And be it further enacted by the authority aforesaid, That from and after the first day of *July* in the year of our Lord One thousand seven hundred and twenty-nine, no attorney or solicitor shall have more than two clerks at one and the same time, who shall become bound by contract in writing as aforesaid, after the said first day of *July*, to serve him as clerks.

Prothonotaries to have three.

XVI. And it is hereby further enacted and declared, That it shall and may be lawful to and for the several prothonotaries of the Court of Common Pleas at *Westminster*, and the secondary of the Court of King's Bench, and the several prothonotaries of the respective courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, and the respective Courts of Great Sessions in *Wales* to have three clerks at one and the same time, and no more; and that such respective clerks, having served a clerkship to any of the said prothonotaries, or secondary, for any term not less than five years, may, after the expiration of such term of five years, be examined, admitted and inrolled, to be an attorney of any of the courts of law aforesaid, and for the same fee, and in the same manner, as any other person may be admitted and inrolled, who shall serve a clerkship to any sworn attorney for the space of five years, in case the judge or judges of the Court, before whom such clerk shall be examined, be upon such examination satisfied, that he is duly qualified to be admitted an attorney of such court; any thing in this Act contained to the contrary notwithstanding.

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XVII. And it is hereby also further enacted by the authority aforesaid, That from and after the said first day of *December* One thousand seven hundred and thirty, if any person who shall be a sworn attorney in any of the courts of law aforesaid, shall knowingly and willingly permit or suffer any other person or persons to sue out any writ or process, or to commence, prosecute, follow or defend any action or actions or other proceedings in his name, not being a sworn attorney of one of the said other courts of law, or a sworn solicitor of the said Court of Chancery, or of some or one of the courts of equity aforesaid, and shall be thereof lawfully convicted, every person so convicted shall, from the time of such conviction, be disabled and made incapable to act as an attorney in any of the courts of law aforesaid, and the admittance of such person to be an attorney of any of the said courts of law shall from thenceforth cease and be void.

Attornies permitting others to issue out writs, &c. disabled from practice.

XVIII. And be it enacted by the authority aforesaid, That from and after the first day of *June* One thousand seven hundred and twenty-nine, the chief clerk of the Court of King's Bench, or his deputy, the clerk of the warrants in the Court of Common Pleas or his deputy, the prothonotaries of the said respective counties palatine of *Lancaster*, *Chester*, and *Durham*, and of the Great Sessions in *Wales*, or their respective deputies, and such officers of the said inferior courts of law, as the judge or judges of the said inferior courts respectively shall for that purpose appoint, shall and they are hereby respectively required from time to time, without fee or reward, to inroll the name of every person who shall be admitted an attorney in the said respective courts of law, pursuant to the directions in this Act, and the time when admitted, in an alphabetical order, in rolls or books to be provided and kept for that purpose in the said several and respective offices; and also that the senior clerk of the Petty-bag Office in the Court of Chancery or his deputy, the King's Remembrancer of the Court of Exchequer or his deputy, the chief clerk of the Court of the Duchy Chamber of *Lancaster*, or his deputy, the registers of the respective courts of equity in the said counties palatine, and of the Great Sessions of *Wales*, or their respective deputies, and such officers of the inferior courts of equity, as the judge or judges of such inferior courts respectively shall for that purpose appoint, shall and they are hereby respectively required from time to time, without fee or reward, to inrol the name of every person who shall be admitted a solicitor in the said respective courts of equity, pursuant to the directions in this Act, and the time when admitted, in an alphabetical order, in rolls or books to be kept for that purpose, in the said respective offices in the said courts of equity; to which rolls or books in the said courts of law and equity respectively all persons shall and may have free access without fee or reward.

Attornies and solicitors to be inrolled in the proper courts.

XIX. Provided always, and it is hereby enacted, That the admission of any attorney in any of the courts aforesaid, pursuant to the directions in this Act, shall and may be written on parchment without any stamp impressed thereupon, in case he hath at any time, on or before the first day of *June* One thousand seven hundred and twenty-nine, been sworn and admitted an attorney of any of the said courts.

Attornies to be admitted without stamp, if sworn before 1 June, 1729.

XX. Provided also, and it is hereby further enacted, That from and after the first day of *December* One thousand seven hundred and thirty, any person who shall be sworn, admitted and inrolled to be an attorney in any of the said courts of King's Bench, Common Pleas, Exchequer, counties palatine of *Chester*, *Lancaster* and *Durham*, and Great Sessions in *Wales*, as hereinbefore directed, may be sworn, admitted and inrolled to be a solicitor in all or any of the courts of equity aforesaid, without any fee for the oath, or any stamp to be impressed on the parchment whereon such admission shall be written, if the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of *Lancaster*, and the Judges of the said other courts of equity for the time being, or any of them respectively, shall, upon examining such attorney touching his fitness

A sworn attorney may be admitted a solicitor.

By 23 Geo. II. c. 26. s. 15. *solicitors may be admitted attornies without fees.*

No. XV.
2 George II.
c. 23.

A sworn solicitor in one court of equity may be admitted into any other court.

and capacity to act as a solicitor in courts of equity, be satisfied that such attorney is duly qualified to be so admitted.

XXI. Provided also, and it is hereby further enacted, That from and after the first day of *December* One thousand seven hundred and thirty, any person who shall be sworn, admitted and inrolled to be a solicitor in any of the said Courts of Chancery, Exchequer, Duchy of *Lancaster*, counties palatine of *Chester*, *Lancaster* and *Durham*, and Great Sessions in *Wales*, as hereinbefore directed, shall and may be sworn, admitted and inrolled to be a solicitor in all or any of the said other courts of equity, or in any inferior court of equity without any fee for the oath or any stamps to be impressed on the parchment whereon such admission shall be written, in case the Master of the Rolls, two Masters of the Chancery, the Barons of the Court of Exchequer, the Chancellor of the Duchy of *Lancaster*, and the Judges of the said other courts of equity for the time being, or any of them respectively, shall, upon examining such person touching his fitness and capacity to act as a solicitor in courts of equity, be satisfied that such person is duly qualified to be so admitted.

The name of the attorney to be written on every writ, &c.

XXII. And be it further enacted by the authority aforesaid, That from and after the first day of *July* One thousand seven hundred and twenty-nine, every writ and process for arresting the body, and every writ of execution, or some label annexed to such writ or process, and every warrant that shall be made out upon any such writ, process or execution, shall, before the service or execution thereof, be subscribed or indorsed with the name of the attorney, clerk in court, or solicitor, written in a common legible hand, by whom such writ, process, execution or warrant respectively shall be sued forth; and where such attorney, clerk in court, or solicitor shall not be the person immediately retained or employed by the plaintiff in the action or suit, then also with the name of the attorney or solicitor so immediately retained or employed, to be subscribed or indorsed and written in like manner; and that every copy of any writ or process that shall be served upon any defendant, shall, before the service thereof, be in like manner subscribed or indorsed, with the name of the attorney or solicitor who shall be immediately retained or employed by the plaintiff in such writ or process.

Attornies &c. not to commence an action for fees till one month after delivery of their bills. *

XXIII. And be it further enacted by the authority aforesaid, That from and after the first day of *July* One thousand seven hundred and twenty-nine, no attorney or solicitor (1) of any of the courts aforesaid, shall commence or maintain any action or suit (2) for the recovery of any fees, charges, or disbursements (3) at law or in equity, (4) until the expiration of one month or more after such attorney or solicitor respectively shall have delivered unto the party or parties to be charged therewith, or (5) left for him, her, or them, at his, her, or their dwell-

(1) The act does not extend to the executors of an attorney, B. N. P. 145.

(2) The delivery of the bill, as here directed, is not necessary in order to support a set-off; but the bill ought to be delivered time enough to have it taxed before the trial; Martin *v.* Winder, Doug. 199. (n). A commission of bankrupt may be taken out on the bill, notwithstanding an order for taxation, in staying proceedings at law; see Martin *v.* Winder, Moseley, 27.

(3) Costs paid to the opposite party are disbursements within the act; semble Hill *v.* Humphreys, 2 B. & P. 343. Not money paid pursuant to an undertaking for debt and costs, in a cause in which the attorney was not concerned; Prothero *v.* Thomas, 1 Marshall, 539.

* See 12 Geo. II. c. 13. § 6, post, as to business done by one attorney for another.

(4) The act does not extend to business done in conveyancing. It extends to drawing an affidavit to hold to bail, and attendance at the swearing; Winter *v.* Payne, 6 T. R. 645; and it was there said, that the act being beneficial to the subject, ought to have a liberal construction. It extends to business done at the Quarter Sessions; Ex parte Williams, 4 T. R. 496.; Clarke *v.* Donovan, 5 T. R. 694: to a dedimus potestatem, to take the acknowledgment of a fine; Brookes *v.* Mason, 1 H. Bl. 290. As to attendance and consultation respecting the suit depending, Qu.; see Mowbray *v.* Fleming, 11 E. 285.

(5) Where the plaintiff delivered his bill to the defendant, who acknowledged the debt, and said he would pay it, but that he did not know what to do with the bill; upon which the plaintiff took it back; it was held that it

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ing-house, (1) or last place of abode, (2) a bill (3) of such fees, charges, and disbursements, written in a common legible hand, and in the *English* tongue (except law terms and names of writs) and in words at length, (4) (except times and sums) which bill shall be subscribed with the proper hand of such attorney or solicitor respectively; and upon application of the party or parties chargeable by such bill, or of any other person in that behalf authorised, unto the said Lord High Chancellor, or the Master of the Rolls, or unto any of the courts aforesaid, or unto a judge or baron of any of the said courts respectively, in which the business contained in such bill (5) or the greatest part thereof in amount or value shall have been transacted; and upon the submission of the said party or parties, or such other person authorised as aforesaid to pay the whole sum, that upon taxation of the said bill shall appear to be due to the said attorney or solicitor respectively, it shall and may be lawful for the said Lord High Chancellor, the said Master of the Rolls, or for any of the courts aforesaid, or for any judge or baron of any of the said courts respectively, and they are hereby required to refer the said bill, and the said attorney's or solicitor's demand thereupon (although no action or suit shall be then depending in such court touching the same) to be taxed and settled by the proper officer of such court, without any money being brought into the said court for that purpose: and if the said attorney or solicitor, or the party or parties chargeable by such bill respectively, having due notice, shall refuse or neglect to attend such taxation, the said officer may proceed to tax the said bill *ex parte* (pending which reference and taxation no action shall be commenced or prosecuted touching the said demand) and, upon the taxation and settlement of such bill and demand, the said party or parties shall forthwith pay to the said attorney or solicitor respectively, or to any person by him authorised to receive the same, that shall be present at the said taxation, or otherwise unto such other person or persons, or in such manner as the respective court aforesaid shall direct, the whole

Judges, &c. to refer bills to be taxed, without money being brought into court, &c.

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ought to have been left; Brookes *v.* Mason, *ut sup.* The Reporter states in a note, that there was no proof that the defendant desired him to take it back again; but what is stated would certainly seem to amount to that. The Court, so far as appears, took no notice of the disjunctive expression of the Act; and in Crowder *v.* Shee, 1 Camp. N. P. 437, it was held, that notwithstanding the attorney shewed his client a copy of the bill, and explained the charges, in which the client acquiesced, the attorney was bound to leave a copy of the bill. Where several are jointly liable, a delivery to one by whose instructions the business was done is sufficient; see Finchett *v.* How, 2 Camp. N. P. 277.

(1) Leaving at the counting-house is not sufficient. Hill *v.* Humphreys, 2 B. & P. 343.

(2) If there is a duplicate of the bill, it may be given in evidence without notice to produce the part delivered: but there not being such duplicate, evidence from entries in the plaintiff's books is not admissible without such notice.

(3) The Court of Common Pleas held delivery of an attorney's bill to be conclusive evidence, on the taxation of costs, against an increase of charge in a subsequent bill, on any of the *items* contained in it; and strong presumptive evidence against any additional items. Loveridge *v.* Botham, 1 B. & P. 49.

(4) See 12 Geo. 2. c. 13. post. § 5.

(5) If a bill contain any one item subject to taxation, it is settled by several cases that the whole must be taxed; Winter *v.* Payne, 6 T. R. 645. Hill *v.* Humphreys, 2 B. & P. 343; Mowbray *v.* Fleming, 11 East. 285; and Lord Eldon in Hill *v.* Humphreys, said "I do not enter into the question, whether if any item, not connected with the profession of an attorney, had been included, the plaintiff would have been precluded from recovering upon them. Perhaps, however, we should not feel great difficulty in holding, that an attorney who inserts his whole demand upon his client in a bill containing taxable items, shall be taken to agree that he will not bring an action upon any part of such demands, until the bill had been delivered a month; but if an attorney have a demand for taxable business, and also for conveyancing, and deliver no bill, it seems he may recover for the conveyancing; see Hill *v.* Humphreys; Miller *v.* Towers, Peake N. P. 102. There being no other bill delivered than the particulars under a rule of Court, it was ruled in Mowbray *v.* Fleming (11 E. 285) that an item for money paid, unconnected with the business of an attorney, might be recovered; see Benton *v.* Guricas, 3 Esp. N. P. Cas. 149.

The items of the bill cannot be examined at Nisi Prius; Williams *v.* Frith, Doug. 197; Hooper *v.* Tell, Doug. 198: but the bill may be taxed after action brought, and at any time before the verdict or judgment, unless the money has been paid into court; Shaw *v.* Pickering, Doug. 198, (n).

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sum that shall be found to be or remain due thereon, which payment shall be a full discharge of the said bill and demand; and in default thereof the said party or parties shall be liable to an attachment or process of contempt, or to such other proceedings, at the election of the said attorney or solicitor, as such party or parties was or were before liable unto; and if, upon the said taxation and settlement, it shall be found that such attorney or solicitor shall happen to have been overpaid, then in such case the said attorney or solicitor respectively shall forthwith refund and pay unto the party or parties entitled thereunto, or to any person by him, her, or them authorised to receive the same, if present at the settling thereof, or otherwise unto such other person or persons, or in such manner as the respective court aforesaid shall direct, all such money as the said officer shall certify to have been so overpaid; and in default thereof the said attorney or solicitor respectively shall in like manner be liable to an attachment or process of contempt, or to such other proceedings, at the election of the said party or parties, as he would have been subject unto if this act had not been made; and the said respective courts are hereby authorised to award the costs of such taxations to be paid by the parties, according to the event of the taxation of the bill (that is to say) if the bill taxed be less by a sixth part than the bill delivered, then the attorney or solicitor is to pay the costs of the taxation;(1) but if it shall not be less, the court in their discretion shall charge the attorney or client, in regard to the reasonableness or unreasonableness of such bills.

Attornies, &c. in their own name suing out any writ, &c. not inrolled, forfeit 50*l.*

XXIV. And be it further enacted, That from and after the first day of *December* One thousand seven hundred and thirty, in case any person shall, in his own name, or in the name of any other person, sue out any writ or process, or commence, prosecute or defend any action or suit, or any proceedings in any of the courts of law or equity aforesaid, as an attorney or solicitor, for or in expectation of any gain, fee or reward, without being admitted and inrolled as aforesaid, every such person, for every such offence, shall forfeit and pay fifty pounds to the use of such person who shall prosecute him for the said offence, and is hereby made incapable to maintain or prosecute any action or suit in any court of law or equity for any fee, reward, or disbursements on account of prosecuting, carrying on or defending any such action, suit, or proceeding.

Forfeitures how to be recovered.

XXV. And be it further enacted by the authority aforesaid, That the penalties and forfeitures incurred by any person offending against this Act may be recovered by action of debt, bill, plaint, or information, in any of His Majesty's courts of record at *Westminster*, or in any of the courts of record of and for the counties palatine of *Chester*, *Lancaster*, and *Durham*, or in any of the courts of great sessions in *Wales*, for offences committed within the jurisdictions of such courts respectively, or at the assises or general quarter sessions of the peace of the county, riding or division where such offence shall be committed, by any person who shall sue for the same within twelve months after such offence committed, together with treble costs of suit, wherein no essoign, protection or wager of law shall be allowed, or any more than one imparlance; and that no such bill, plaint, suit or information, nor any proceedings thereupon, shall be removed before judgment, or stayed by any writ of *certiorari*, *habeas corpus*, or other writ whatsoever.

To what clerks, &c. the Act doth not extend.

XXVI. Provided nevertheless, and it is hereby further enacted by the authority aforesaid, That nothing in this Act contained shall extend or be construed to extend to the examination, swearing, admission or inrolment of the six clerks of the Court of Chancery, or the sworn clerks in their office, or the waiting clerks belonging to the said six clerks, or the cursitors of the said court, or of the clerks of the Petty-bag office, or of the clerks of the King's coroner and attorney in the Court of

(1) This provision only applies when the bill is reduced on account of the charges being objectionable; not where the foundation of the demand as to a particular branch of business is denied and disallowed. White *v.* Milner, 2 H. B. 357.

King's Bench, or of the filazers of the same court, or of the filazers of the court of Common Pleas at *Westminster*, or of the attornies of the Court of the Duchy Chamber of *Lancaster*, or of the attornies of the Court of Exchequer at *Chester*, or of the attornies of the courts of the Lord Mayor and Sheriffs of *London* respectively for the time being; but that the said clerks, filazers and attornies respectively, shall and may be examined, sworn, admitted, inrolled and practise in their respective courts and offices aforesaid, in like manner as they might have been or done before the making of this Act.

No. XV. 2 George II. c. 23.

XXVII. Provided also, and it is hereby further declared and enacted by the authority aforesaid, That nothing in this Act contained shall extend or be construed to extend to the examination, swearing, admission or inrolment of the attornies or clerks of the offices of the King's Remembrancer, Treasurer's Remembrancer, Pipe, or Office of Pleas in the Court of Exchequer at *Westminster* for the time being; but that the said attornies and clerks of the said respective offices shall and may be approved, sworn, admitted and practise in the said Court of Exchequer, or may practise in any other of the Courts of Record before mentioned, in the name and with the consent of some sworn attorney of such court, such consent to be in writing, and signed by such attorney as aforesaid, in like manner as they have usually been, and might have done, before the making of this Act, any thing herein contained to the contrary in any wise notwithstanding; and that it shall and may be lawful, from and after the said first day of *December* One thousand seven hundred and thirty, for any person who shall be sworn, admitted and inrolled an attorney or solicitor in any of the several courts before mentioned, according to the direction of this Act, to practise and solicit in the said respective offices, in the same manner as heretofore has been done; any thing hereinbefore contained, or any law or statute to the contrary, notwithstanding.

The attornies and clerks in the Exchequer, herein mentioned may act as heretofore,

as also the solicitors of the Treasury, &c,

XXVIII. Provided also, That this Act, or any thing herein contained, shall not extend or be construed to extend to the examination, swearing, admission or inrolment of persons to be solicitors of the treasury, customs, excise, post office, salt or stamp duties, or of any other branches of his Majesty's revenue for the time being, or of the solicitor of the city of *London* for the time being, or of the assistant to the council for the affairs of the admiralty and navy; but that such solicitors and assistant may be examined, sworn, admitted and practise, in their respective offices only, as they might have done before the making of this Act.

Continuation of this Act.

XXIX. Provided always, and be it enacted by the authority aforesaid, That this Act shall continue in force from the said first day of *June* One thousand seven hundred and twenty-nine for the term of nine years, and from thence unto the end of the then next session of parliament, and no longer. [Continued by 12 Geo. 2. c. 13. and amended and continued by 22 Geo. 2. c. 46. until 1 *June* 1757. And to the end of the next session.] *Made perpetual by* 30 *Geo.* 2. *c.* 19. *sect.* 75.

## [ No. XVa. ] 5 Geo. II. c. 18.—An Act for the further Qualification of Justices of the Peace.

[This Act at length in Vol. VII.]

5 George II. c. 18.

II. AND be it further enacted by the authority aforesaid, That no attorney, solicitor or proctor in any court whatsoever shall, from and after the said twenty-fifth day of *March* One thousand seven hundred and thirty-three, be capable to continue or be a justice of the peace within any county for that part of *Great Britain* called *England*, or the principality of *Wales*, during such time as he shall continue in the business and practice of an attorney, solicitor or proctor.

Attornies, solicitors, and proctors incapacitated.

## [ No. XVI. ] 6 Geo. II. c. 27.—An Act to explain and amend an Act made in the second year of his present

No. XVI.
6 George II. c. 27.

Majesty's Reign, intituled, "An Act for the better Regulation of Attornies and Solicitors."

2 George II. c. 23.

'WHEREAS by an Act made in the second year of his present Majesty's reign, intituled, "An Act for the better Regulation of 'Attornies and Solicitors," it was enacted, That from and after the first 'day of *December* One thousand seven hundred and thirty, no person, 'who should not before the said first day of *December* have been sworn, 'admitted and inrolled, pursuant to the directions of the said Act, 'should be permitted to act as an attorney, or to sue out any writ or 'process, or to commence, carry on or defend any action or actions, or 'any proceedings, either before or after judgment obtained, in the name 'or names of any other person or persons, in any of the courts of law in 'the said Act mentioned, unless such person should have been bound by 'contract in writing to serve as a clerk, for and during the space of five 'years, to an attorney duly and legally sworn and admitted, as in the 'said Act is directed, in some or one of the courts therein mentioned, 'and that such person, for and during the said term of five years, should 'have continued in such service, and also unless such person, after the 'expiration of the said term of five years, should be examined, sworn, 'admitted and inrolled in the same manner as the persons who should be 'admitted attornies of the said courts are therein required to be examined, sworn, admitted and inrolled: Now for the relief of persons who 'have served for and during the space of five years, as clerks to attornies 'or solicitors in any of the courts of law or equity in the said Act mentioned, and have not been bound by contracts in writing, and who were 'by sickness prevented from being sworn, admitted and inrolled attornies, pursuant to the directions of the said Act, and for the relief of 'persons who have served as clerks to such attornies or solicitors for and 'during the space of five years, and have been bound by contracts in 'writing, but have not served for and during the space of five years, since 'the dates of such contracts, or who, being sons of such attornies or 'solicitors, have served as clerks to their respective fathers for and 'during the space of five years, but have not been bound by contracts in 'writing;' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that every such person being first examined and approved, as by the said Act is directed, shall and may, on or before the last day of *Michaelmas* term which shall be in the year of our Lord One thousand seven hundred and thirty-three, be qualified to be sworn, admitted and inrolled an attorney in the several and respective courts in the said Act mentioned; any thing in the said Act to the contrary notwithstanding.

Relief for persons not inrolled attornies, &c. pursuant to the said Act.

Persons admitted attornies in any court at *Westminster*, may be admitted in inferior courts, if otherwise duly qualified.

II. And be it further enacted by the authority aforesaid, That any person who hath been by virtue of the said Act admitted an attorney in any of his Majesty's Courts of Record at *Westminster*, shall and may be capable of being admitted to practise as an attorney in any inferior Court of Record, provided such person be in all other respects capable and qualified to be admitted an attorney according to the usage and custom of such inferior court; any thing in the said Act contained to the contrary in any wise notwithstanding.

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[No. XVII.] 12 Geo. II. c. 13.—An Act for continuing the Act made in the eighth Year of the Reign of her late Majesty Queen *Anne*, to regulate the Price and Assize of Bread; and for continuing, explaining, and amending the Act made in the second Year of the Reign of his present Majesty, for the better Regulation of Attornies and Solicitors.

12 George II. c. 13.

III. AND be it further enacted by the authority aforesaid, That an Act made in the second year of the reign of his present Majesty,

No. XVII. 12 George II. c. 13.

intituled, "An Act for the better Regulation of Attornies and Solicitors," which was to continue in force from the first day of *June* One thousand seven hundred and twenty-nine, for the space of nine years, and from thence to the end of the then next sessions of parliament, and is near expiring, shall be and is hereby further continued from the expiration thereof until the said twenty-fourth day of *June* One thousand seven hundred and forty-eight, and from thence to the end of the then next sessions of parliament.

2 Geo. II. c. 23. Continued and amended by 22 Geo. 2. c. 46. *and made perpetual by* 30 *Geo.* 2. *c.* 19. § 75.

Not indorsing attorney's name on warrants upon writs, not to vitiate the same.

IV. And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, in the year of our Lord One thousand seven hundred and thirty-nine, the not subscribing or indorsing the name of the attorney's clerk in court, or solicitor, on any warrant that shall be made out upon any writ, process, or execution, shall not vitiate the same; but such writ, process, and execution, and all proceedings thereon, shall be as valid and effectual, notwithstanding such omission, as if the said recited Act for regulating attornies and solicitors had not been made; provided the writ whereon such warrant is made out be regularly subscribed or indorsed according to the said Act; and every sheriff or sheriffs, or other officer, who shall make out any warrant upon any writ, process, or execution, and shall not subscribe or indorse the name of the attorney, clerk in court or solicitor, who sued out the same, shall forfeit the sum of five pounds, to be assessed as a fine upon such sheriff or sheriffs, or other officer, by the court out of which such writ, process, or execution shall issue; one moiety thereof to be paid to his Majesty, his heirs and successors, and the other moiety to the person or persons aggrieved by such omission.

Officers to indorse attornies' names upon writs.

Attornies may use abbreviations in their bills.

V. And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-nine, it shall and may be lawful to and for every attorney, clerk in court and solicitor, to write his bill of fees, charges, and disbursements, with such abbreviations as are now commonly used in the *English* language; any thing in any former law to the contrary notwithstanding.

2 Geo. 2. c. 23. Not to extend to any bill of fees between one solicitor and another.

VI. And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-nine, the said Act of the second year of his present Majesty, for the better regulation of attornies and solicitors, or any clause, matter, or thing therein contained, shall not extend to any bill of fees, charges, and disbursements, that are now, or shall hereafter become due from any attorney or solicitor (1) to any other attorney or solicitor, or clerk in court; but that every such attorney, solicitor, or clerk in court, may use such remedies for the recovery of his fees, charges, and disbursements against such other attorney or solicitor, as he might have done before the making of the said Act.

Penalty on persons unqualified acting in county courts.

VII. And be it further enacted, That in case any person shall, from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-nine, commence or defend any action, or sue out any writ, process, or summons, or carry on any proceedings in the court commonly called *The County Court*, holden in any county in that part of *Great Britain* called *England*, who is not or shall not then be legally admitted an attorney or solicitor, according to the said Act made in the second year of the reign of his present Majesty, that such person shall for every such offence forfeit the sum of twenty pounds, to be recovered with costs by any other person who shall sue for the same, within twelve months next after such offence shall be committed, in any of his Majesty's courts of record.

Quakers to be inrolled upon their affirmation.

VIII. And be it enacted by the authority aforesaid, That any person being one of the people called *Quakers* who may have served, or shall hereafter serve, a clerkship with an attorney or solicitor, and shall be

(1) This provision applies, although the business was done before the defendant became an attorney; Ford *v.* Maxwell, 2 H. B. 589.

No. XVII. 12 George II. c. 13.

qualified as by the said Act before is required, shall, upon taking his solemn affirmation instead of the oaths thereby directed to be taken, before such judges and others who are hereby authorized and required to administer the said affirmation, be admitted and inrolled as an attorney or solicitor, as if he had taken the said oaths; any thing in the said Act to the contrary notwithstanding.

Ne attornies, &c. to commence suits, if prisoners.

IX. And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* One thousand seven hundred and thirty-nine, no attorney or solicitor, who shall be a prisoner in any gaol or prison, or within the limits, rules, or liberties of any gaol or prison, shall during his confinement in any gaol or prison, or within the limits, rules, or liberties of any gaol or prison, in his own name, or in the name of any other attorney or solicitor, sue out any writ or process, or commence or prosecute any action or suit in any courts of law or equity; and that all proceedings in such actions or suits shall be void and of none effect; and such attorney or solicitor so commencing or prosecuting any action or suit as aforesaid, shall be struck off the roll, and incapacitated from acting as an attorney or solicitor for the future; and any attorney or solicitor permitting or impowering any such attorney or solicitor as aforesaid to commence or prosecute any action or suit in his name, shall be struck off the roll, and incapacitated from acting as an attorney or solicitor for the future.

Penalty.

Proviso.

X. Provided nevertheless, and it is hereby further enacted by the authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to prevent any attorney or solicitor so confined as aforesaid, from carrying on or transacting any suit or suits commenced before the confinement of such attorney or solicitor as aforesaid; any thing in this Act contained to the contrary notwithstanding.

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## [ No. XVIII. ] 22 Geo. II. c. 46.—An Act to continue several Laws for preventing Exactions of the Occupiers of Locks and Wears upon the River *Thames* Westward, and for ascertaining the Rates of Water Carriage upon the said River; and for continuing, explaining, and amending the several Laws for the better Regulations of Attornies and Solicitors; and for regulating the Price and Assize of Bread; and for preventing the spreading of the Distemper amongst the horned Cattle; and also for making further Regulations with respect to Attornies and Solicitors; and for further preventing the spreading of the Distemper amongst the horned Cattle; and for the more frequent Return of Writs in the Counties Palatine of *Chester* and *Lancaster;* and for ascertaining the Method of levying Writs of Execution against the Inhabitants of Hundreds; and for allowing *Quakers* to make Affirmation in Cases where an Oath is or shall be required.

22 George II. c. 46.

2 Geo. 2. c. 23. *made perpetual by* 30 *Geo.* 2. *c.* 19. § 25.

[II. AND be it further enacted by the authority aforesaid, That an Act made in the second year of the reign of his present Majesty, intituled, "An Act for the better Regulation of Attornies and Solicitors," which was to be in force from the first day of *June* One thousand seven hundred and twenty-nine, for the term of nine years, and from thence to the end of the then next Session of Parliament; and which by an Act made in the twelfth year of his present Majesty, for continuing several laws therein mentioned, was explained and amended, and further continued until the twenty-fourth day of *June* One thousand seven hundred and forty-eight, and from thence to the end of the then next session of Parliament, shall be, and the same is hereby, together with the alterations and amendments made by the said Act of the twelfth year of his

present Majesty, and those hereinafter mentioned, further continued from the expiration thereof until the twenty-fourth day of *June*, which shall be in the year of our Lord One thousand seven hundred and fifty-seven, and from thence to the end of the then next Session of Parliament.

Persons bound to serve as clerks to attornies, to cause affidavit to be made within three months of the execution of such contracts, &c.

III. And for the better preventing unqualified persons from being admitted attornies and solicitors, and for rendering the said Act more effectual for the purposes thereby intended; be it enacted by the authority aforesaid, That every person who shall, from and after the first day of *July* One thousand seven hundred and forty-nine, be bound by contract in writing to serve as a clerk to any attorney or solicitor, as by the said Act is directed, shall, within three months next after the date of every such contract, cause an affidavit to be made and duly sworn of the actual execution of every such contract, by every such attorney or solicitor, and the person so to be bound to serve as a clerk as aforesaid; and in every such affidavit shall be specified the names of every such attorney and solicitor, and of every such person so bound, and their places of abode respectively, together with the day of the date of such contract; and every such affidavit shall be filed within the time aforesaid, in the court where the attorney or solicitor to whom every such person respectively shall be bound as aforesaid, hath been inrolled as an attorney or solicitor, with the respective officer or officers, or his or their respective deputy or deputies, in the respective courts hereinafter mentioned, who shall make and sign a memorandum or mark of the day of filing every such affidavit at the back or at the bottom thereof.

Affidavits to be filed.

None to be admitted before such affidavit be produced.

IV. And be it further enacted, That no person who shall, after the said first day of *July*, become bound as aforesaid, shall be admitted or inrolled an attorney or solicitor in any court in the said Act mentioned, before such affidavit, so marked by the proper officer as aforesaid, shall be produced and openly read in such court, where such person shall be admitted and inrolled an attorney or solicitor.

Officers who are to file such affidavits.

V. And it is hereby enacted and declared, That the several persons following shall be deemed and taken to be the proper officers for filing such affidavits in the respective courts hereinafter mentioned (that is to say) in the High Court of Chancery, the senior clerk of the Petty Bag Office, or his deputy; in the Court of King's Bench, the chief clerk of that court, or his deputy; in the Court of Common Pleas, the clerk of the warrants of that court, or his deputy; in the Court of Exchequer, the King's Remembrancer of that court, or his deputy; in the Court of the Duchy Chamber of *Lancaster* at *Westminster*, the chief clerk of that court, or his deputy; and in the several Counties Palatine of *Chester*, *Lancaster*, and *Durham*, the respective Prothonotaries of the said Counties Palatine, and their respective deputies; and in the several courts of the Great Sessions of *Wales*, the respective Prothonotaries of the said courts, and their respective deputies.

Books to be kept for entering the names and places of abode of every such attorney and clerk, &c.

VI. And be it further enacted, That every such officer or officers, or their respective deputy or deputies, filing such affidavit as aforesaid, shall keep a book, wherein shall be entered the substance of such affidavit, specifying the names and places of abode of every such attorney or solicitor, and clerk or person bound as aforesaid, and of the person making such affidavit, with the date of the articles or contract in such affidavit to be mentioned, and the days of swearing and filing every such affidavit respectively; and every such officer or officers, or his or their deputy or deputies, shall be at liberty to take, at the time of filing every such affidavit, the sum of two shillings and sixpence, and no more, as a recompence for his trouble in filing such affidavits, and preparing and keeping such books as aforesaid, and which said books shall and may be searched in office hours, by any person or persons whatsoever, without fee or reward.

No attorney to take a clerk after discontinuing business.

VII. And be it further enacted, That from and after the said first day of *July*, no attorney or solicitor shall take, have, or retain any clerk, who shall become bound by contract in writing as aforesaid, after such attorney or solicitor shall have discontinued or left off, or during such

No. XVIII. 22 George II. c. 46.

time as he shall not actually practise as, or carry on the business of an attorney or solicitor.

Clerks to be employed during their contract.

VIII. And be it further enacted, That every person who shall, from and after the said first day of *July*, become bound, by contract in writing, to serve any attorney or solicitor, as by the said Act is directed, shall, during the whole time and term of service, to be specified in such contract, continue and be actually employed by such attorney or solicitor, or his or their agent or agents, in the proper business, practice or employment of an attorney or solicitor.

Affidavit of the execution of second contracts by such clerks, the service of five years to be deemed effectual.

IX. Provided always, and it is hereby enacted, If any such attorney or solicitor, to or with whom any such person shall be so bound, shall happen to die before the expiration of such term or shall discontinue or leave off such his practice as aforesaid, or if such contract shall by mutual consent of the parties be cancelled, or in case such clerk shall be legally discharged by any rule or order of the court, wherein such attorney or solicitor shall practice, before the expiration of such term, and such clerk shall in any of the said cases be bound by another contract, or other contracts, in writing to serve, and shall accordingly serve in manner hereinbefore mentioned, as clerk to any other such practising attorney or attornies, solicitor or solicitors as aforesaid respectively, during the residue of the said term of five years; then such service shall be deemed and taken to be as good, effectual, and available, as if such clerk had continued to serve as a clerk for the said term, to the same person to whom he was originally bound, so as an affidavit be duly made and filed of the execution of such second or other contract or contracts, within the time, and in like manner, as is before directed concerning such original contract.

Clerks, before admitted, to make affidavit of having served five years.

X. And be it further enacted, That every person who, from and after the said first day of *July*, shall become bound as a clerk as aforesaid, shall, before he be admitted an attorney or solicitor according to the said Act, cause an affidavit of himself, or such attorney or solicitor, to whom he was bound as aforesaid, to be duly made and filed with the proper officer hereinbefore for that purpose appointed, that he hath actually and really served and been employed by such practising attorney or attornies, solicitor or solicitors, to whom he was bound as aforesaid, or his or their agent or agents, during the said whole term of five years, according to the true intent and meaning of this Act.

Sworn attornies acting as agents for persons not qualified, &c.

'XI. And whereas divers persons who are not examined, sworn, or admitted to act as attornies or solicitors in any court of law or equity, do, in conjunction with, or by the assistance or connivance of certain sworn attornies and solicitors, and by various subtle contrivances, intrude themselves into, and act and practise in the office and business of attornies and solicitors, to the great prejudice and loss of many of his Majesty's subjects, and the scandal of the profession of the law;' Be it therefore enacted, That from and after the twenty-ninth day of *September*, which shall be in the year of our Lord One thousand seven hundred and forty-nine, if any sworn attorney or solicitor shall act as agent for any person or persons, not duly qualified to act as an attorney or solicitor as aforesaid, or permit or suffer his name to be any ways made use of upon the account, or for the profit of any unqualified person or persons, or send any process to such unqualified person or persons, thereby to enable him or them to appear, act, or practise in any respect as an attorney or solicitor, knowing him not to be duly qualified as aforesaid, and complaint shall be made thereof in a summary way to the court from whence any such process did issue, and proof made thereof, upon oath, to the satisfaction of the court, that such sworn attorney or solicitor hath offended therein as aforesaid; then and in such case every such attorney or solicitor so offending shall be struck off the roll, and for ever after disabled from practising as an attorney or solicitor; and in that case, and upon such complaint and proof made as aforesaid, it shall and may be lawful to and for the said court to commit such unqualified person, so acting or practising as aforesaid, to the prison of the said court, for any time not exceeding one year.

to be struck off the roll,

and be committed.

'XII. And whereas frequent delays, inconveniences, and unnecessary

No. XVIII. 22 George II. c. 46.

'expenses arise and happen, as well to parishes as private persons, by the 'mismanagement and unskilfulness of persons employed as solicitors or 'agents at the Sessions held for the several Counties, Ridings, Divisions, 'Cities, Towns Corporate, and other places of this kingdom, who having 'never been regularly bred to the law, and being ignorant of the forms 'and operations thereof, offenders against the laws of the land have 'frequently escaped with impunity:' For remedying therefore of these inconveniences, be it enacted by the authority aforesaid, That from and after the twenty-ninth day of *September*, which shall be in the year of our Lord One thousand seven hundred and forty-nine, no person whatsoever shall act as a solicitor, attorney, or agent, or sue out any process, at any General or Quarter Sessions of the Peace for any County, Riding, Division, City, Town Corporate, or other place within this kingdom, either with respect to matters of a criminal or civil nature, unless such person shall have been heretofore admitted an attorney of one of his Majesty's Courts of Record at *Westminster*, and duly inrolled pursuant to an Act made in the second year of His present Majesty's reign, intituled, "An Act for the better Regulation of Attornies and Solicitors," or unless such person shall hereafter be admitted an attorney, and inrolled as aforesaid by virtue of this Act, or such other law as shall be then in being, and unless such person shall continue so entered upon the roll, at the time of such his acting in the capacity aforesaid; but all and every person or persons respectively, who shall so act, not being admitted and inrolled as aforesaid, shall be subject and liable to a penalty of fifty pounds; to be recovered by action of Debt, Bill, Plaint, or Information, in any of the Courts of Record at *Westminster*, by any person or persons who shall sue for the same, within twelve months after the offence committed, with treble costs of suit; and if any attorney or attornies shall permit and suffer any person or persons whatsoever, not being admitted and inrolled as aforesaid, to make use of his or their name or names respectively, in the courts of General or Quarter Sessions aforesaid, such attorney or attornies respectively shall be subject and liable to a like penalty of fifty pounds, to be recovered in manner aforesaid.

None to act as attornies who were not admitted according to 2 Geo. 2. c. 23.

Penalty 50*l.* with treble costs.

Attornies suffering persons not admitted to use their names, to forfeit 50*l.*

XIII. Provided always, That nothing herein contained shall extend, or be construed to extend, to deprive the attornies of the Duchy of *Lancaster*, or of the Courts of Great Sessions in *Wales*, or of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, from acting within their respective jurisdictions.

Persons exempted.

XIV. And to the end that justice may be impartially administered in the several General or Quarter Sessions of this kingdom, be it further enacted by the authority aforesaid, That no clerk of the peace, or his deputy, nor any under-sheriff, or his deputy, shall, from and after the said twenty-ninth day of *September*, act as a solicitor, attorney, or agent, to sue out any process, at any General or Quarter Sessions of the Peace to be held for such County, Riding, Division, City, Town Corporate, or other place within this kingdom, where he shall execute the office of clerk of the peace, or deputy clerk of the peace, under-sheriff, or deputy, on any pretence whatsoever; but if any clerk of the peace, or his deputy, or any under-sheriff, or his deputy, shall presume to act as a solicitor, attorney, or agent as aforesaid, such clerk of the peace, or his deputy, under-sheriff, or his deputy respectively, shall be subject and liable to a like penalty of fifty pounds to be recovered in manner aforesaid.

No clerk of the peace, under-sheriff, &c. to act as attornies &c. at Quarter-Sessions for the County, &c.

Penalty 50*l.*

'XV. And whereas several persons have been bound by articles in 'writing to attornies of one of His Majesty's Courts at *Westminster*, to 'serve them as their clerks for the term of five years, which attornies 'have died before the expiration of the said five years, and after their 'deaths such persons so bound have served the remainder of the said 'term with some other attornies of the said courts, but have neglected 'to enter into articles with the said other attornies for the remainder of 'the term of five years, and therefore doubts have arisen, whether such 'persons could be admitted attornies of any of His Majesty's courts by 'reason that such service was not strictly in pursuance of the direction

No. XVIII. 22 George II. c. 46.

Clerks, whose masters have died, serving the residue of their times with others without fresh contracts, to be admitted.

'of the before-mentioned Act;' Be it therefore enacted and declared by the authority aforesaid, That all such persons who shall have been so bound as aforesaid for the term of five years to attornies of any of His Majesty's courts at *Westminster*, which said attornies shall have died before the determination of the said term, if such persons shall afterwards, and before the twenty-fifth day of *March* One thousand seven hundred and forty-nine, have served the residue of the said term of five years, with some other attornies of one of His Majesty's said courts, though without entering into any new articles, such persons having so served during the said term of five years, shall and may be admitted attornies in any of His Majesty's courts at *Westminster*; any thing in the said Act or in this present Act contained to the contrary in any wise notwithstanding.

Persons admitted sworn clerks in the office of the Six Clerks, or bound for five years, &c.

may be admitted solicitors.

XVI. And be it further enacted by the authority aforesaid, That any person who shall have been admitted a sworn clerk in the office of the Six Clerks of the Court of *Chancery*, or shall have been bound by contract in writing, to serve as a clerk for and during the space of five years, to a sworn clerk in the said office, and for and during the said term of five years shall have continued in such service, and shall have continued in such service for the space of three years, or more, and shall have been admitted a waiting clerk, or acted as such during the residue of the said term of five years, may be examined, sworn, and admitted and inrolled as a solicitor, in the same manner as solicitors in courts of equity are by the said Act required to be examined, sworn, admitted, and inrolled; any thing in the said Act to the contrary notwithstanding.

Clerks whose masters have died, &c. entering into fresh contracts, and serving the residue of their time, same to be effectual.

XVII. Provided also, and it is hereby further enacted, That if any sworn clerk in the said Six Clerks' Office, with and to whom any person hath been, or shall be bound by contract in writing as aforesaid, to serve as a clerk for the term of five years, shall happen to die before the expiration of the said term of five years, or if such contract shall, by mutual consent of the parties, be vacated, or in case such clerk be legally discharged by any rule or order of the Court of *Chancery*, before the expiration of the said term of five years; then, and in any of the said cases, if such clerk shall by contract in writing be obliged to serve, and shall accordingly serve as a clerk to any other sworn clerk in the said Six Clerks' Office, or to any solicitor who shall be sworn, admitted, and inrolled, pursuant to the said Act of the second year of His present Majesty, during the residue of the said term of five years, then such service shall be deemed and taken to be as good and effectual as if such clerk had continued to serve as a clerk for the term of five years to the same person to whom he was originally bound by contract in writing as aforesaid.

No sworn clerk to have more than two clerks.

XVIII. Provided always, and it is hereby further enacted by the authority aforesaid, That no sworn clerk in the said Six Clerks' Office shall have more than two clerks at one and the same time, including the clerk who shall be entered on the roll kept by the Master of the Rolls, or his secretary, for that purpose.

Persons exempted.

XIX. Provided also, and it is hereby further declared and enacted by the authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend to the taking or binding, examination, swearing, admission or inrolment of the attornies, or clerks of the offices of the King's Remembrancer, Treasurer's Remembrancer, Pipe, or Office of Pleas, in the Court of *Exchequer*, at *Westminster*, for the time being, but that the said attornies and clerks of the said respective offices shall and may be taken, bound, approved, sworn, admitted, and practise in the said Court of *Exchequer*, in like manner as they usually have been, and might have done before the making or this Act, and may practise in any other of the courts of record before mentioned, in the name and with the consent of some sworn attorney of such court, such consent being in writing, and signed by such attorney as aforesaid, in the manner as they have usually been and might have done before the making of this Act.

[ No. XIX. ] 23 George II. c. 26.—An Act to continue several Laws for the better regulating of Pilots, for the conducting of ships and vessels from *Dover*, *Deal*, and *Isle of Thanet*, up the Rivers of *Thames* and *Medway*; and for permitting Rum or Spirits of the *British* Sugar Plantations to be landed before the duties of excise are paid thereon; and to continue and amend an Act for preventing frauds in the admeasurement of Coals within the city and liberty of *Westminster*, and several parishes near thereunto; and to continue several Laws for preventing exactions of occupiers of locks and wears upon the River *Thames* westward; and for ascertaining the rates of water carriage upon the said river; and for the better regulation and government of Seamen in the merchants' service; and also to amend so much of an Act made in the first year of the reign of King *George* the First as relates to the better preservation of Salmon in the River *Ribble*; and to regulate Fees in trials at Assizes, and *Nisi Prius*, upon records issuing out of the Office of Pleas of the Court of *Exchequer*; and for the apprehending of persons in any county or place, upon warrants granted by Justices of the Peace in any other county or place; and to repeal so much of an Act made in the twelfth year of the reign of King *Charles* the Second, as relates to the time during which the Office of Excise is to be kept open each day, and to appoint for how long time the same shall be kept open upon each day for the future; and to prevent the stealing or destroying of Turnips; and to amend an Act made in the second year of His present Majesty, for better regulation of Attornies and Solicitors.

No. XIX. 23 George II. c. 26.

'XV. AND whereas by an Act of Parliament made and passed in the second year of the reign of His present Majesty, intituled "An Act for the better regulation of Attornies and Solicitors," it was enacted, That from and after the first day of *December* One thousand seven hundred and thirty, any person who should be sworn, admitted, and inrolled to be an attorney in any of His Majesty's Courts of *King's Bench*, *Common Pleas*, *Exchequer*, counties palatine of *Chester*, *Lancaster*, and *Durham*, and Great Sessions in *Wales*, as is therein directed, might be sworn, admitted, and inrolled to be a solicitor in all or any of the courts of equity in the said Act specified, without any fee for the oath, or any stamp to be impressed on the parchment, whereon such admission should be written, if the Master of the Rolls, two Masters of the *Chancery*, the Barons of the Court of *Exchequer*, the Chancellor of the Duchy of *Lancaster*, and the Judges of the other courts of equity, in the said Act mentioned for the time being, or any of them respectively, should, upon examining such attorney, touching his fitness and capacity to act as a solicitor in courts of equity, be satisfied that such attorney is duly qualified to be so admitted; but there being no provision made in the said in part recited Act, for admitting persons (who had been, or shall be sworn, admitted, and inrolled solicitors in any of the courts of equity in the said Act mentioned) attornies of any of His Majesty's courts of law therein also mentioned, although such solicitor should be duly qualified in all

2 George II. c. 23. § 20. *made perpetual by* 30 *George* 2. c. 19. § 75.

No. XIX. 23 George II. c. 26.

Solicitors in the courts of equity may be admitted attornies without fees.

'other respects;' Wherefore, and to supply such omission, Be it enacted by the authority aforesaid, that from and after the second day of *May* One thousand seven hundred and fifty, any person who hath been already, or who at any time or times hereafter shall be sworn, admitted, and inrolled a solicitor in any of His Majesty's courts of equity at *Westminster*, in such manner as by the said Act is directed, may be sworn, admitted, and inrolled to be an attorney of His Majesty's Court of *King's Bench* or *Common Pleas* at *Westminster*, without any fee for the oath, or any stamp to be impressed on the parchment whereon such admission shall be written (his having been sworn, admitted, and inrolled a solicitor in any of the courts of equity aforementioned notwithstanding) if the judges of the said Courts of *King's Bench* or *Common Pleas* for the time being, or any of them respectively, shall, upon examining such solicitor touching his fitness and capacity to act as an attorney in the said respective courts, be satisfied that such solicitor is duly qualified to be sworn, admitted, and inrolled an attorney, pursuant to the said in part recited Act, and other the laws now in force concerning attornies and solicitors.

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[ No. XX. ] 49 George III. c. 28.—An Act to enable the Clerks of the King's Coroner and Attorney in the Court of King's Bench to be admitted as Attornies. [30th *March* 1809.]

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[ No. XXI. ] 58 George III. c. 5.—An Act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for offices and employments, and for extending the time limited for those purposes respectively, until the 25th day of *March* 1819; and to permit such persons in *Great Britain* as have omitted to make and file affidavits of the execution of Indentures of Clerks to Attornies and Solicitors to make and file the same on or before the first day of Hilary Term, 1819, and to allow persons to make and file such affidavits, although the persons whom they served shall have neglected to take out their annual certificates. [17th *March*, 1818.]

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[ No. XXII. ] 59 George III. c. 11.—An Act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for offices and employments, and for extending the time limited for certain of those purposes respectively until the twenty-fifth day of *March* 1820; and to permit such persons in *Great Britain* as have omitted to make and file affidavits of the execution of Indentures of Clerks to Attornies and Solicitors to make and file the same on or before the first day of Hilary Term 1820, and to allow persons to make and file such affidavits although the persons whom they served shall have neglected to take out their annual certificates. [23d *March* 1819.]

[ No. XXIII. ] 59 George III. c. 93.—An Act to continue for one year, and from thence until the end of the then next session of Parliament an Act made in the fifty-sixth year of His present Majesty's reign, to make provision for securing the profits of the office of Clerk of the Pleas of His Majesty's Court of Exchequer in *Ireland*. [12th *July* 1819.]

No. XXIII. 59 Geo. III. c. 93.

[ No. XXIV. ] 60 George III. and 1 George IV. c. 10.—An Act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for offices and employments, and for extending the time limited for certain of those purposes respectively, until the twenty-fifth day of *March* 1821, and to permit such persons in *Great Britain* as have omitted to make and file affidavits of the execution of Indentures of Clerks to Attornies and Solicitors to make and file the same on or before the first day of Hilary Term 1821, and to allow persons to make and file such affidavits, although the persons whom they served shall have neglected to take out their annual certificates. [28th *February*, 1820]

[ No. XXV. ] 1 George IV. c. 35.—An Act for the better securing monies and effects paid into the Court of Exchequer at *Westminster*, on account of the suitors of the said Court, and for the appointment of an Accountant-General and two Masters of the said Court; and for other purposes. [8th *July* 1820.]

1 G. 4. c. 35.

Order of the Court of Exchequer at *Westminster*, 17th *July* 1747, as to securing of the suitors' money.

WHEREAS His Majesty's Court of Exchequer at *Westminster* did, on the seventeenth day of *July* One thousand seven hundred and forty-seven, make an order touching the money belonging to the suitors of that court, whereby after reciting that His Majesty's Remembrancer of the said court and his deputy had informed the said court, that there were standing in the name of the said deputy, in the books of the governor and company of the Bank of *England*, and in the books of the *South Sea* Company, divers sums in certain stocks and annuities of the said companies respectively, which had been purchased with the money of the suitors of the said court, or were belonging to them, and that no declaration of trust had been or could be made in relation thereto, in the books of the said several companies, without an order of the said court for that purpose; it was ordered, that the said Deputy Remembrancer should cause the said sum to be transferred in the books of the said companies into his name, as Deputy Remembrancer of the said court, in trust to attend the orders of the said court in the several causes to which the same respectively belonged; and that for the future all other sums of stock or annuities, or any other transferable securities for the benefit of or belonging to the suitors of the said court, should be in like manner transferred in trust to attend the orders of the said court, to be made in the several causes to which the same should respectively belong; and that the said Deputy Remembrancer should from time to time receive the dividends or interest to arise on all the said securities, in order to apply the same for the benefit of the suitors, pursuant to the orders of the said court; and by the said

No. XXV.
1 George IV.
c. 35.

Effects, &c. of suitors disposed of under recited order.

order, certain other regulations were made for the conduct of the said Deputy Remembrancer in the sale and transfer of such stocks and securities, and the receipt of the dividends and interest thereon: And whereas several effects of the suitors of the said court were and from time to time have been delivered into the Bank of *England* and elsewhere, and divers stocks, funds and annuities were and have been transferred from time to time in the books of the Bank of *England*, *South Sea* Company and *East India* Company, into the name of the Deputy Remembrancer of the said court for the time being, and are now standing in the said books in the name of *Abel Moysey* Esquire, the present deputy remembrancer of the said court; but no declaration of trust relating thereto has been made in the books of the said several companies, according to the said order, and large sums of money or securities for money belonging to the said suitors are now in the hands, custody, or power of the said *Abel Moysey*; and it is expedient that a fit and proper person should be appointed to be Accountant-General of the said court, in whose name all effects, stocks, funds, annuities and securities belonging to the said suitors, might become and be from time to time securely vested for the use of the said suitors, and who might keep the account of the funds of the said suitors, but who should have no power to dispose of or otherwise intermeddle with such funds, further or otherwise than as hereinafter directed: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, no sum or sums of money, stocks, funds, or securities whatsoever, belonging to the suitors of the said court shall be paid or transferred to or become vested in the Deputy Remembrancer of the said court, or the King's Remembrancer or his deputy for the time being, otherwise than as hereinafter is directed: any thing in the said recited order, or any law, usage, or custom of the said court to the contrary in any wise notwithstanding.

No money, &c. shall be paid to deputy remembrancer, under said order, after the passing of this act.

An accountant-general of the said court shall be appointed by the lord chief baron of the exchequer.

II. And, to the end that the accounts between the suitors of the said Court of Exchequer and the Governor and Company of the Bank of *England*, and every other body politic or corporate, or company whom it may concern, may be more regularly and plainly kept, and the state of such accounts be at all times seen and known; be it enacted, That as soon as may be after the passing of this Act, there shall be appointed by the Lord Chief Baron of the said Court of Exchequer, by writing under his hand and seal, to be duly enrolled among the records of the said court, one person who shall act and do all matters and things relating to the delivering, securing, and investing of the money and effects of the suitors of the said court, and the payment, selling, and transferring of the same, and the keeping the accounts with the Bank of *England*, or any other body politic or corporate, or company, and other matters relating thereto; which said officer so to be appointed shall be called "The Accountant-General of the Court of Exchequer," and such person shall also be one of the masters of the said court, and shall hold such offices during his good behaviour in the said offices; and accounts shall be raised and kept causewise in the books of the Bank of *England*, and of every other body politic or corporate, or company whom it may concern, to be respectively intituled "The account of *A. B.* the Accountant-General of the Court of Exchequer," for and on behalf of the suitors of the said court, in like manner as such accounts are kept between the Accountant-General of the Court of Chancery and the Bank of *England*, or any other body politic or corporate, or company; and all such rules, methods and directions as by this Act are prescribed to the suitors of the said Court of Exchequer, or to the said Accountant-General of the said court, or to the Governor and Company of the Bank of *England*, or any other body politic or corporate, or company, or as shall or may be ordered or prescribed by the said Court of Exchequer, or by the Lord Chief Baron, or by the baron to be nominated and appointed by His Majesty, under and by virtue of the Act hereinafter men-

tioned, from time to time, as to the delivering, securing and investing, or the paying, selling, or transferring of the monies, stocks, funds, securities, and effects of the suitors of the said Court of Exchequer, shall be observed by the suitors, the Governor and Company of the Bank of *England*, and every other body politic or corporate, or company, and the Accountant-General, under the provisions of this Act.

Accountant-General not to meddle with the suitors' money, but only keep account with the Bank, &c.

III. And, to the end that all misapplication or wasting of the suitor's money may be entirely prevented, be it therefore enacted, That the Accountant-General of the said Court of Exchequer for the time being shall not meddle with the actual receipt of any of the money or effects of the suitors of the said court, but shall only keep the account thereof with the Governor and Company of the Bank of *England*, and every other body politic or corporate, or company, whom it may concern; and such Accountant-General observing the rules by this Act prescribed, or hereafter to be prescribed to him by the said Court of Exchequer, shall not be answerable for any money or effects which he shall not actually receive; and the Bank of *England* or such other body politic or corporate, or company, shall be answerable for all the monies and effects of the suitors which are or shall be actually received by them respectively.

Mortgages, &c. shall be taken, and remain in the name of the accountant-general.

IV. And be it further enacted, That all mortgages, stocks, funds, annuities, and such other transferable securities, to be hereafter taken by the directions of the said court, or of the Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, for the benefit of the suitors, shall, if appointed to be taken in the name of any officer of the said court, be taken in the name of the said Accountant-General; and that in all such transferable securities to be hereafter taken in his name, the particular trust shall be specified and inserted in the security itself, and such other rules and methods of proceeding shall be had and observed with respect to such transferable securities by the Accountant-General and others, as in and by this Act are directed, or as shall be directed by the said Court of Exchequer, or by the Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, to be observed by the Accountant-General for the time being, and all other persons respectively.

All acts done by accountant-general under order of court, declared to be valid.

V. And be it further enacted, That all acts to be done by any such Accountant-General for the time being, under any order or orders, decree or decrees of the said Court of Exchequer, or of the Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, touching any real or personal estate, property, or effects by this Act vested or intended to be vested in any such Accountant-General, and in succeeding Accountants-General, shall by force of this Act be deemed and taken to be valid and effectual to all intents and purposes whatsoever.

All funds and securities standing in the name of the present deputy remembrancer shall become vested in and transferred to the account of the accountant-general, upon his appointment.

VI. And be it further enacted, That when and so soon after the passing of this Act as any person shall be appointed to be Accountant-General of the said Court of Exchequer, all stocks, funds, annuities and securities whatsoever, which at the time of the appointment of such Accountant-General shall be standing in the name of the said *Abel Moysey*, as the Deputy Remembrancer of the said court, or of any Deputy Remembrancer of the said court for the time being, in the books of the Bank of *England*, or in the books of the *South Sea* Company, or in the books of the *East India* Company, or in the books of any body politic or corporate, or company whatever; and all such exchequer bills or other securities, which at any time before the appointment of such Accountant-General shall have been transferred into or vested in the name of, or shall be in the custody or power of the said *Abel Moysey*, or of the Deputy Remembrancer for the time being, by or on behalf of any of the suitors of the said court, pursuant to the said hereinbefore recited order, or any other order or decree of the same court, or Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, or which shall have been purchased pursuant to any decree or order of the same court, or Lord Chief Baron, or other baron to be nominated and

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appointed as aforesaid, in the name of the said *Abel Moysey*, or of any Deputy Remembrancer of the said court; and all real and personal estate, effects and property whatsoever, which by virtue of the said hereinbefore recited order, or any order or decree of the said Court of Exchequer, or Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, or by virtue of any conveyance, assignment, transfer, obligation or otherwise, shall at any time before the appointment of such Accountant-General have been conveyed, assigned, or transferred, or made payable or secured to the said *Abel Moysey*, as Deputy Remembrancer, or to the Deputy Remembrancer of the said court for the time being, as such Deputy Remembrancer, and which shall not have been applied to the trusts and purposes to which the same were applicable, under the order or direction of the said court, shall immediately upon the appointment of any person to be such Accountant-General of the said court as aforesaid, under the provisions of this Act, become, and the same are hereby declared to be vested in such Accountant-General in right of his office by force of this Act, and without any act or deed whatsoever to be done or executed by the said *Abel Moysey*, his heirs, executors, or administrators, or by any Deputy Remembrancer of the said court for the time being, or by his heirs, executors, or administrators, or any person or persons claiming under him, them, or any of them, notwithstanding any such interest may have been vested in or conveyed, assigned, transferred, and made payable to or secured to the said *Abel Moysey*, or to such Deputy Remembrancer for the time being, his heirs, executors, administrators and assigns, or any of them, and shall and may be proceeded upon by and in the name of such Accountant-General, in right of his office, by any action or suit at law or in equity, or in any other manner as the same might have been proceeded upon, by or in the name or names of the said *Abel Moysey*, or of such Deputy Remembrancer for the time being, or his heirs, executors, or administrators, and shall be subject to all such trusts as the same were before respectively subject to; and all such funds, stocks, annuities, and securities as shall at the time of the appointment of such Accountant-General be standing in the name of the said *Abel Moysey*, as Deputy Remembrancer as aforesaid, or of any Deputy Remembrancer of the said Court for the time being, in the books of the said Bank of *England*, *South Sea* Company, and *East India* Company, or in the books of any body politic or corporate, or company, shall upon the appointment of such Accountant-General be carried by the proper officers of the said companies respectively to the credit of the said Accountant-General, as such Accountant-General in the books of the said Bank of *England*, *South Sea* Company, *East India* Company, or other body politic or corporate respectively; any thing in any act or acts of parliament for the creation or regulation of any such funds, stocks, annuities, or securities, or any other act or acts to the contrary thereof in any wise notwithstanding.

An account of all stock, cash, exchequer bills, &c. in the hands of the present deputy remembrancer, shall be made up, and such cash, &c. shall be paid into the Bank to the account of the accountant-general.

VII. And be it further enacted, That when and so soon after the passing of this Act as any person shall be appointed to be Accountant-General of the said Court of Exchequer, pursuant to the directions of this Act, the said *Abel Moysey*, the present Deputy Remembrancer of the said court, or his executors or administrators, or any Deputy Remembrancer of the said court for the time being, or his executors or administrators, shall, without delay, make up accounts with such Accountant-General, or any other person thereto authorised by the said Court of Exchequer, or Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, of all stocks, funds, annuities or securities, which shall be standing in the name of the said *Abel Moysey*, or any Deputy Remembrancer of the said court for the time being as such Deputy Remembrancer, in the books of the Bank of *England*, *South Sea* Company, or *East India* Company, or in the books of any other body politic or corporate, or company; and that the said *Abel Moysey*, or any Deputy Remembrancer of the said court for the time being, his executors or administrators, shall also, without delay, make out a true and perfect schedule of all cash, exchequer bills, bonds, mortgages, tallies, orders,

and effects whatsoever, deposited or remaining in his custody, power, or disposal, or standing in his name as Deputy Remembrancer, and of all monies which shall have been paid into the said Bank of *England*, or to the said *Abel Moysey* as Deputy Remembrancer as aforesaid, or any deputy remembrancer of the said court for the time being, under or by virtue of the said hereinbefore recited order, or of any other order, or any decree of the said Court of Exchequer, or Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, belonging to the suitors of the said court, and which shall not have been invested in any such stocks, funds, or annuities; and that the said *Abel Moysey*, or any deputy remembrancer of the said court for the time being, and his executors or administrators, shall swear to the truth and accuracy of such schedule according to the best of his and their knowledge and belief; and the said *Abel Moysey*, or any deputy remembrancer of the said court for the time being, or his executors or administrators, shall, according to such schedule, deliver and pay all such cash, exchequer bills, bonds, mortgages, tallies, orders, and effects, into the Bank of *England*, to the credit and account of the person so to be appointed the Accountant-General of the said Court of Exchequer; and at the time of such payment or delivery, the said *Abel Moysey*, or any deputy remembrancer of the said court for the time being, their or his executors or administrators, shall receive, from one of the cashiers of the Governor and Company of the Bank of *England*, a receipt or certificate stating the amount of such cash, exchequer bills, bonds, mortgages, tallies, orders, and effects, so delivered and paid into the said Bank; and such receipt or certificate, and such schedule, shall be delivered into the said Court of Exchequer upon oath, to be there filed and enrolled as the said court, or the Lord Chief Baron of the said court, or the baron to be nominated and appointed as aforesaid, shall order or direct; and all such stocks, funds, or securities, and also all such cash, exchequer bills, bonds, mortgages, tallies, orders and effects, shall be carried to the credit and account of the said Accountant-General of the said Court of Exchequer, and be placed causewise in the books to be kept for that purpose, or in such other manner as shall be ordered by the said Court of Exchequer, or by the Lord Chief Baron of the said court, or by the baron to be nominated and appointed as aforesaid, and the said *Abel Moysey*, or any deputy remembrancer of the said court for the time being, his executors and administrators, shall thereupon be indemnified and discharged of and from all stocks, funds, annuities, monies, securities, deposits, and effects of the said suitors, transferred to or vested in such Accountant-General, or actually paid and delivered into the Bank of *England* as aforesaid.

On death, resignation, &c. of Accountant-General, all property in the suitor's money shall vest in his successors.

VIII. And be it further enacted, That in all cases in which by virtue of this Act, or of any Act of Parliament, conveyance, assignment, transfer, obligation or security, any interest in real or personal estate, effects or property, shall be vested in, conveyed, assigned, transferred, made payable to or secured to the Accountant-General of the said Court of Exchequer for the time being, as such Accountant-General; and in respect of his office, all such real and personal estate, effects, and property whatsoever, upon the death, removal, or resignation of each and every Accountant-General of the said court, from time to time and as often as the same shall happen, and the appointment of a successor shall take place, shall (subject to the same trusts as the same were before respectively subject to) vest in the succeeding Accountant-General, by force of this Act, and without any act or deed whatever to be done by the Accountant-General resigning or removed, or by the heirs, executors or administrators of any Accountant-General resigning, removed, or dying, or by any person or persons claiming under him, them, or any of them, and notwithstanding any such interest may have been expressed to be vested in, conveyed, assigned, transferred, made payable to or secured to the Accountant-General of the said court, his heirs, executors, administrators, and assigns, or any of them, and shall and may be proceeded upon in the name of such succeeding Accountant-

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General, by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of such Accountant-General so resigning, removed, or dying, his heirs, executors, or administrators.

All payments of money under orders of the court shall be made into the Bank, to the account of the Accountant-General.

IX. And be it further enacted, That whenever at any time after the first appointment of a person to be Accountant-General of the said Court of Exchequer as aforesaid, any person or persons shall be ordered by the said Court of Exchequer, or by the Lord Chief Baron of the said court, or by the baron to be nominated and appointed as aforesaid, to pay any sum or sums of money, or any exchequer bills, bills of exchange, or other negotiable securities, in any cause or matter before the said court, into the Bank of *England*, to the account of the Accountant-General of the said court, the party upon whom the order for payment of such money shall be made, shall, with the privity of such Accountant-General for the time being, pay the same into the Bank of *England*, to the account of the Accountant-General of the said court, and the party so paying any such sum shall take a receipt for the same from one of the cashiers of the said Bank of *England*, which receipt shall be delivered to the said Accountant-General of the said court, who shall thereupon make and sign a certificate of such payment, which certificate shall be countersigned by and shall be filed with the clerk of the reports hereinafter directed to be appointed; and that whenever at any time after the said appointment of a person to be Accountant-General of the said court as aforesaid, any money shall by the said Court of Exchequer, or by the Lord Chief Baron of the said court, or by the baron to be nominated and appointed as aforesaid, be ordered to be invested in government or other securities, the species of the particular securities in which the same shall be directed to be invested shall be mentioned in the order to be made for that purpose; and in case any such securities shall consist of public funds, stocks, or annuities, the same shall be transferred into the name of the said Accountant-General; and that every such transfer shall contain a declaration of trust, in the books of the said Bank of *England*, that such funds, stocks, or annuities are so transferred in trust to attend the orders of the said Court of Exchequer; and in case any such securities shall consist of *East India* bonds, exchequer bills, tallies or orders, the same shall be delivered into the Bank of *England*, and placed to the account of the Accountant-General of the said court, in the books of the said Bank as hereinbefore directed, subject to the orders of the said Court of Exchequer; and if any of the securities shall consist of stocks or annuities of the Bank of *England*, the *East India* Company or *South Sea* Company, or any other body politic or corporate, such stock or annuities shall be transferred into the name of such Accountant-General, and that every such transfer shall contain an entry or declaration of trust in the books of the respective companies, that such stocks or annuities are so transferred in trust to attend the orders of the said Court of Exchequer; and the said Accountant-General shall take a certificate thereof from the proper officer of the company whom it may concern, and shall deliver such certificate into the Bank, in order that one of the cashiers of the Bank may receive the dividends thereupon; and the said Accountant-General shall make a report or certificate of all such securities to the said Court of Exchequer, which report or certificate shall be filed with the clerk of the reports, and shall specify the dates and numbers of such bonds, tallies, and orders, and the quantities of such stocks or annuities, and the time of the transfer of such stocks or annuities into the name of such Accountant-General.

Orders of the Court of Exchequer shall state in what securities money shall be invested.

East India bonds, exchequer bills, &c. shall be delivered into the Bank; and certificates of East India stock, &c. taken by Accountant-General;

who shall report on such securities.

Bank shall receive all interest of funds, and principal of exchequer bills, and carry the same to the credit of Accountant-General.

X. And be it further enacted, That one of the cashiers of the Bank of *England* shall at all times hereafter, from time to time, receive all interest due upon all exchequer bills and other securities, delivered in or deposited at the said Bank on account of the said Accountant-General, and also all the principal money becoming due on such exchequer bills,

or, if so directed by the said Accountant-General, shall receive new exchequer bills in lieu of any exchequer bills becoming payable; and shall also receive all principal money becoming due on any bills of exchange or negotiable securities, so delivered in or deposited at the said Bank on account of the said Accountant-General, and one of the cashiers of the said Bank shall likewise receive all the dividends of all such stocks, funds, or annuities, transferable at the said Bank, or in the books of the *East India* Company, or *South Sea* Company, or of any other body politic or corporate, as shall at any time be transferred into or standing in the name of the said Accountant-General; and the said Accountant-General shall for that purpose authorise and empower one of the cashiers of the said Bank to receive such interest and dividends, and all such principal money, or to receive such new exchequer bills; and all such interest and dividends and principal money or new exchequer bills, when so received, shall be from time to time placed to the credit of such Accountant-General, and entered causewise in the said account so to be kept in his name in the books of the Bank of *England*.

How money shall be repaid out of the Bank by draft of the Accountant-General.

XI. And be it further enacted, That whenever any money belonging to the suitors of the said court, or any other person or persons, received by the Bank of *England*, pursuant to the directions of this Act, shall by any decree or order of the said Court of Exchequer, or of the Lord Chief Baron of the said court, or of the baron to be nominated and appointed as aforesaid, be directed to be paid out to any party or parties, in any cause or matter, or to any other person or persons, the clerk in court, solicitor, or agent for such party, or other person, shall attend the said Accountant-General with an office copy of such decree or order, and of any report to which such decree or order may refer, as specifying the money to be so paid; and the said Accountant-General shall forthwith make a certificate thereof to be filed by the clerk in court, or solicitor for the party, with the clerk of the reports hereinafter directed to be appointed; and the said Accountant-General shall, by note under his hand, draw on the Bank for so much money as shall be so directed to be paid, upon check paper, fairly written and signed by the said Accountant-General, which note shall be compared with such certificate, and the decree or order, and also the report, if any, under which such certificate shall have been made, and when so compared, such note shall be countersigned by the clerk of the reports, and entered by him in a book to be kept for that purpose, and shall be a sufficient authority to the Bank of *England* to pay such money to the person or persons mentioned in such note, or to such person as he, she, or they, by indorsement thereon, shall order to receive the same, as likewise to write off the amount of such money from the account of the Accountant-General, to be kept in the books of the said Bank; but when any sum of money shall be directed to be paid out of such money so to be received by the Bank to any suitor, or any other person or persons for interest or maintenance, the said Accountant-General shall, by such note under his hand, upon check paper, without any certificate, draw on the Bank for the same, and such note being signed by the Accountant-General, and countersigned by the clerk of the reports, as is before directed, shall be a proper authority for the Bank to pay the same: Provided always, that every such note as aforesaid, which shall be drawn and signed under the provisions of this Act, shall be limited to be paid within one calendar month after date, and if it be not paid within such time such note shall be void.

How securities deposited in the Bank shall be delivered out under orders of the court, &c.

XII. And be it further enacted, That whenever any security or securities deposited or to be deposited at the Bank of *England*, under the directions of this Act, shall be directed by order of the said Court of Exchequer, or of the Lord Chief Baron thereof, or by the baron nominated and appointed as aforesaid for the time being, to be delivered out of the said Bank, for any purpose whatever, a certificate shall be made out by the clerk of the reports, under the direction of the said Court of Exchequer, or of the Lord Chief Baron of the said court; or of the baron nominated and appointed as aforesaid, stating the nature and

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amount of the securities to be delivered out, together with the numbers, dates, and sums of such securities or security, and the name of the cause or matter wherein the same are or is directed to be delivered out, and the person to whom the same are or is delivered, which certificate shall be entered by the clerk of the reports in a book to be kept by him for that purpose, and shall be delivered by the clerk in court or solicitor employed in the cause or matter to the said Accountant-General, who shall countersign the same; and such certificate so countersigned shall be a sufficient voucher and authority to the proper officer at the said Bank of *England*, to deliver over such security or securities, and to enter the delivery of such security or securities in the account of the said Accountant-General, kept in the books of the said Bank.

How stock shall be transferred under orders of the court.

XIII. And be it further enacted, That whenever any stock in the books of the Bank of *England*, *South Sea* Company, *East India* Company, or any company or body politic or corporate, shall be ordered by the said Court of Exchequer, or by the Lord Chief Baron of the said court, or by the baron nominated and appointed as aforesaid, to be sold, or to be transferred to any person or persons, a certificate of the decree or order directing such sale or transfer shall be signed by the said clerk of the reports, who shall certify under his hand to the said Accountant-General what stock he is by such decree or order to sell or to transfer, and in case of a transfer to whom such transfer is to be made; which certificate shall be entered by the clerk of the reports in a book to be kept by him for that purpose; and the clerk in court or solicitor in the cause shall carry such certificate to the said Accountant-General, who shall, within one week, or at the then next opening of the respective companies' books, attend in person and deliver the same, or cause the same to be delivered to the proper officer of such company, and transfer such stocks, or give sufficient authority to some other person so to do, according to such certificate; and such certificate is hereby declared to be a sufficient authority for making such transfer or transfers as shall, by the decree or order mentioned in such certificate, be required to be made in execution of the said decree or order.

The Bank, &c. shall make transfer according to certificates, &c. produced.

XIV. And be it further enacted, That the proper officer of the Bank of *England*, *East India* Company, *South Sea* Company, or any other company, or body politic or corporate whom it may concern, shall and do from time to time permit and suffer every such transfer as is required by this Act to be made by the Accountant-General for the time being, upon the production of the several certificates of the several decrees or orders of the said Court of Exchequer for such purpose, signed and attested as by this Act is directed and required.

Court of Exchequer or Lord Chief Baron empowered to make orders for carrying this Act into execution.

XV. And for the better and more effectually carrying this Act into execution, be it further enacted, That it shall and may be lawful to and for the said Court of Exchequer, or for the Lord Chief Baron thereof, or other baron to be nominated and appointed as aforesaid, and the said court, or Lord Chief Baron or other baron to be nominated and appointed as aforesaid, are hereby authorised and empowered from time to time to make all such further orders and regulations as the said court shall deem necessary and proper for effectuating all or any of the purposes hereinbefore expressed; Provided always, that when any such orders and regulations shall be made, a true copy thereof shall be made by the clerk of the reports, and signed by him, and transmitted to the said Accountant-General, who shall cause a true copy of such copy, signed by him, to be transmitted to the Governor or Deputy Governor of the Bank of *England*, or to any other company, body politic or corporate, whom it may concern, who, after receiving a copy of such orders and regulations, shall cause the same to be observed in the same manner as if any such orders and regulations had originally formed a part of this Act.

Suitors' cash in the Bank to be common cash.

XVI. And to the end that no suitor or suitors of the said Court of Exchequer may be delayed in payment of any money due to him, her, or them, but that every one may receive his or her full demand whensoever he or she shall apply for the same, in the most easy and expeditious way; be it therefore enacted, That all the money and cash now deposited and

to be deposited in or paid to the said Bank of *England*, on account of the suitors of the said Court of Exchequer, or any of them, or by order of the said court, shall be and be accounted and taken to be one common and general cash, and shall be promiscuously issued and issuable when and as the said Court of Exchequer shall direct.

57 G. 3. c. 18.

XVII. And whereas under and by virtue of an Act, made in the fifty-seventh year of the reign of His late Majesty King *George* the Third, intituled *An Act to facilitate the hearing and determining of Suits in Equity in His Majesty's Court of Exchequer at Westminster*, in consequence of the great increase of the proceedings in the common law side of the said Court of Exchequer, the Lord Chief Baron of the said court for the time being, or in case of his sickness or other unavoidable absence, any baron of the said court nominated and appointed by His Majesty, is empowered to hear and determine all causes, matters, and things which shall be at any time depending in the said Court of Exchequer as a court of equity, whether the rest of the barons of the said court shall be sitting or not: And whereas by the course and practice of the said Court of Exchequer for many years, the person holding the office of deputy to the King's Remembrancer has taken the minutes of all decrees and orders of the said court, as well in matters of revenue as in proceedings on the equity side of the said court, and hath also been employed in reporting to the court his opinion upon the several matters referred to him: And whereas in consequence of the division of the business of the said court, pursuant to the said last recited Act of the fifty-seventh year of the reign of His said late Majesty, it hath become expedient that there should be two joint officers to perform the said duties on the equity side of the said court, in all suits and matters between subject and subject; be it therefore enacted, That it shall and may be lawful for the Lord Chief Baron of the said Court of Exchequer for the time being, and he is hereby authorized, empowered, and required, to nominate and appoint, by writing under his hand and seal, to be enrolled among the records of the said court, two fit and proper persons, being barristers at law of not less than five years' standing, to be and be called Masters of the said Court of Exchequer, and that one of such masters shall be the Accountant-General of the said court as hereinbefore mentioned: and that such two masters shall hold the said offices during their good behaviour therein, and not be in anywise subject to the orders or control of the King's Remembrancer of the said court or his deputy; and that each of the said masters of the said court shall act jointly or severally as the said court or Lord Chief Baron or other baron to be nominated and appointed as aforesaid, from time to time shall direct, in all matters of reference from the Court or Lord Chief Baron or other baron to be nominated and appointed as aforesaid, and proceedings relating thereto, in all suits and matters on the equity side of the said court between subject and subject; and it shall be the duty and office of the said masters to attend the said court, and the Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, in their own proper persons and not by deputy, and to take the minutes of all orders and decrees which shall be made by the said court or by the Lord Chief Baron thereof, or by the baron to be nominated and appointed as aforesaid, as well in matters of revenue as on the equity side of the said court, which orders or decrees shall be afterwards drawn and ingrossed by the clerks in court in each respective cause or suit, and shall and may be corrected, either in form or substance, by such masters respectively, at the instance of any of the parties affected by any such order or decree, according to the minutes taken by such masters respectively, pursuant to the directions of the said court, or of the said Lord Chief Baron, or the baron to be nominated and appointed as aforesaid, and shall be afterwards entered by the King's Remembrancer amongst the records of the said court, pursuant to the antient course thereof; and it shall also be the office and duty of such masters respectively to receive all such references on matters of account, and on all other matters and things on the equity side of the said court, as shall be made and referred to them by the said Court of Exchequer, or by the Lord Chief Baron, or by the baron to be nominated

The Lord Chief Baron to appoint two barristers (the Accountant-General being one), to be masters of the Court of Exchequer, and both shall act in person in taking minutes of decrees, &c. and receiving references on accounts, &c. on the equity side of the court.

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and appointed as aforesaid, and to report thereon to the said court, or the Lord Chief Baron, or to the baron to be nominated and appointed as aforesaid, in such manner as heretofore was used and accustomed to be done by the person holding the office of deputy remembrancer, or as shall be directed and ordered by the said court, or by the Lord Chief Baron, or by the baron to be nominated and appointed as aforesaid, from time to time, and in all things to do, execute, and perform all such duties as masters of the equity side of the said court as they shall be required to do, by any order or orders to be for that purpose from time to time made by the said court, or by the Lord Chief Baron, or by the baron to be nominated and appointed as aforesaid.

Oath of office to be taken by the master.

XVIII. And whereas by the antient law and custom of the said Court of Exchequer, an oath hath been always administered to and taken by the King's Remembrancer and Deputy Remembrancer of the said court; be it enacted, That the two masters so to be appointed under this Act shall, before acting in the said offices, respectively take and subscribe the following oath, in the presence of the Lord Chief Baron, or one of the barons of the said court; (that is to say),

'YOU do swear, That you will well and truly serve for the King our Sovereign Lord, in the office of one of the masters of this His Majesty's Court of Exchequer at *Westminster*, to which you are appointed; you shall true entry make of the minutes of all orders, decrees, awards, and other matters and things pronounced by the said court, or by the Lord Chief Baron of the said court, or by any baron thereof to be nominated and appointed by His Majesty under and by virtue of an Act made in the fifty-seventh year of the reign of King George the Third, for facilitating the hearing and determining of suits in equity in the said Court of Exchequer, and which ought to be entered in the said office, and that with all convenient speed; you shall not take of any person or persons, by promise, gift, reward, or otherwise, whereby the King's Majesty may lose or be hindered, or by which the right may be let or hindered to any manner of person or persons; and all other things belonging to your said office to do, you shall well and truly do without fraud or guile.

So help you GOD.'

In case of illness, &c. of the Accountant-General, the court may order the other master to act for him in that office.

XIX. And be it further enacted, That in case it shall happen at any time that the Accountant-General of the said Court of Exchequer for the time being shall by illness or any other cause be prevented from attending to the duties of the said office of Accountant-General, then and in every such case, it shall and may be lawful for the said Court of Exchequer, or Lord Chief Baron or baron to be nominated and appointed as aforesaid, by any order or orders to be made for that purpose, to direct the other master of the said court for the time being, either generally or specially, to execute and perform all or any of the duties of the said Accountant-General in his name, and in such manner and under such regulations as shall be directed and contained in such order or orders to be made for that purpose; and the person so to be appointed shall be called Accountant-General of the Court of Exchequer, *pro tempore*, and shall be so described in all acts to be done by him in the execution of the duties of the said office.

Appointment and duty of clerk to the said two masters.

XX. And whereas it will be greatly for the advantage of the suitors of the said court, and a great assistance to the masters so to be appointed, that some one or more experienced person or persons should be appointed to be clerk or clerks to the said masters; be it enacted, That it shall be lawful for the said two masters from time to time, and they are hereby required by writing under their respective hands, to appoint some fit and proper person or persons to be their clerk or clerks; and that such person or persons so to be appointed shall have and receive all such fees for executing the said duties as have been usually received by the present clerk of the said *Abel Moysey*; such fees to continue to be paid until and unless some order touching such fees shall be made by the said court; and in case the two masters shall not agree in such appointment,

the Lord Chief Baron shall appoint a proper person or persons to be such clerk or clerks.

No. XXV. 1 George IV. c. 35.

Appointment and duty of the keeper of reports and certificates.

XXI. And whereas it is expedient that there should be some fit and proper person appointed to be keeper of the reports and certificates now filed in the said court, or which shall hereafter be filed in the said court, for the purposes of this Act; be it enacted, That it shall and may be lawful for the Lord Chief Baron of the said Court of Exchequer for the time being, and he is hereby authorized and required by writing under his hand and seal, to be enrolled among the records of the said court, to appoint one fit and proper person to be keeper of such reports and certificates, who shall be called "The Clerk of the Reports," and who shall at all times examine and countersign all certificates, checks, and drafts by this Act required to be signed by the Accountant-General; and shall receive all such certificates, and also all reports and certificates made by either of the said masters, and shall duly file the same certificates and reports, and shall receive the fees due to the clerk in court on filing and copying the same, *viz.* three shillings and fourpence for filing, and eightpence *per* folio for copying the same; and shall duly and regularly account to the clerk in court for such fees, and shall do all such other matters and things with respect to the certificates and checks of the said Accountant-General, and with respect to the certificates, reports, and other business of the said two masters; and shall duly and regularly attend at such times and places as shall from time to time be ordered, required, and directed by any order or orders to be made by the said Court of Exchequer, or by the Lord Chief Baron thereof from time to time for that purpose; and in case the said clerk of the reports shall by illness or any other cause be prevented from attending to the duties of the said office, then and in every such case it shall and may be lawful for the said Lord Chief Baron, or other Baron to be nominated and appointed as aforesaid for the time being, to order and direct some other fit and proper person to execute and perform all such duties as are required to be done by the clerk of the said reports, who shall be called "Clerk of the Reports *pro tempore*."

65,000*l.* of suitors' cash in the Bank may be placed by the court on government securities.

XXII. And whereas there is now, and from many years' experience it hath been found that there always hath been, a very large sum of money belonging to the suitors of the said Court of Exchequer, which lies dead and unemployed in the hands of the Deputy Remembrancer of the said Court; over and besides what hath been necessary to answer the demands of the said suitors; be it therefore enacted, That out of the cash which shall be paid into the Bank of *England* by the said *Abel Moysey*, according to the directions for that purpose hereinbefore contained, and out of the cash which shall thereafter lie dead and unemployed in the Bank of *England*, belonging to the suitors of the said Court of Exchequer, a sum not exceeding sixty-five thousand pounds, shall and may, by virtue of any order or orders of the said court, or Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, to be made for that purpose, from time to time be placed out in one entire sum, or in parcels, in the name of the Accountant-General of the Court of Exchequer, in such government or parliamentary securities as in and by such order or orders shall be directed, and shall be carried to an account of monies placed out for the benefit and better security of the suitors of the Court of Exchequer, to the intent that the interest and annual profits arising from the money so to be placed out as aforesaid, may be applied for the purposes hereinafter mentioned; and it shall be lawful for the said Court of Exchequer, or Lord Chief Baron, or other baron to be nominated and appointed as aforesaid, from time to time, to change the security or securities on which the said monies shall be placed, as the said court shall think expedient.

Interest to be received by the Bank, and salaries paid thereout to the

XXIII. And be it further enacted, That the interest and annual profits arising and to be produced from the said securities, shall from time to time be received by the Governor and Company of the Bank of *England*, and placed to the credit of an account to be raised in the books kept there for the suitors of the said court, under the title of "Account of

No. XXV. 1 George IV. c. 35.

Accountant-General and masters, and their clerks.

Interest arising from Monies placed out for the Benefit and better security of the Suitors of the Court of Exchequer, in pursuance of an Act of the first year of the reign of King *George* the Fourth;" and that out of such interest money and annual profits there shall be paid, in the first place, the costs and expenses attending or relating to the passing of this Act, and that out of the remainder of such interest or profits there shall be paid, by quarterly payments, the annual sum of two thousand one hundred pounds, which payment shall be made by the Governor and Company of the Bank of *England*, by virtue of any order or orders of the Court of Exchequer, or of the Lord Chief Baron or other baron to be nominated and appointed as aforesaid, to be made for that purpose, *viz.* to the Accountant-General of the Court of Exchequer, in his joint capacity of Accountant-General and master, the sum of one thousand pounds, over and above his fees as master, and to the other of the said two masters the sum of seven hundred pounds, over and above his fees as master, and to one or two persons who shall be clerk or clerks of the said two masters, the sum of one hundred pounds, over and above his or their fees as such clerk or clerks, and to the clerk or keeper of the reports and certificates the yearly salary of one hundred and fifty pounds, and to the clerk of the said Accountant-General the yearly salary of one hundred and fifty pounds, over and besides his fees as such clerk to the said Accountant-General, reserving to the first and second secondaries, their sworn clerks and their clerks, their accustomed fees, which have been lawfully taken for filing and copying such reports and certificates, *viz.* three shillings and fourpence for filing, and eightpence *per* folio for copying such reports and certificates; all which said salaries shall be over and above the fees of the said respective offices, to be ascertained and authorized in manner hereinafter mentioned, and shall commence from the time or times to be appointed for that purpose by any order or orders of the said Court of Exchequer, or of the Lord Chief Baron, or other baron to be nominated and appointed as aforesaid; and the residue of the interest and annual profits arising and to be produced from the said securities shall be carried to a separate account in the name of the said Accountant-General, to be intituled "The Redemption Fund of the Suitors of the Court of Exchequer," and shall from time to time be laid out under the orders of the said Court of Exchequer, or of the Lord Chief Baron of the said court, or of the baron nominated and appointed as aforesaid, in the purchase of Bank three *per centum* annuities, in the name of the said Accountant-General; and the interest and annual profits arising therefrom shall be applied from time to time in the same manner, so as by accumulation to create a fund for repayment to the common and general cash of the suitors of the said Court of Exchequer of the said sum of sixty-five thousand pounds, hereinbefore directed to be taken from such common and general cash, and as a security for repayment thereof.

Surplus fees, exceeding the sums herein specified, to be paid into the Bank, and applied as herein directed.

XXIV. Provided always, and be it enacted, That if at any time the fees received by such Accountant-General shall exceed the sum of one thousand five hundred pounds in any one year, so that the whole of the salary and fees of such Accountant-General shall exceed two thousand five hundred pounds, or if the fees received by such master, not being Accountant-General, shall exceed the sum of one thousand three hundred pounds in any one year, so that the whole of the salary and fees of such master shall exceed two thousand pounds a year, then and in either of such cases respectively the amount of all fees and sums of money, exceeding such sums of one thousand five hundred pounds and one thousand three hundred pounds respectively, shall, by the said Accountant-General and the said master respectively, be paid into the Bank of *England*, in the name of the Accountant-General to the account hereinbefore mentioned, called the Redemption Fund of the Suitors of the said court, and shall be applied in such manner as all other sums paid to the account of such Redemption Fund are by this Act required and directed to be applied; and for the ascertaining the yearly amount of all such fees, the said Accountant-General and master respectively shall once in

every year within the first three days of *Michaelmas* term in each year, deliver into the said Court of Exchequer an account, under the hand and signed with the name of such Accountant-General and master respectively, of the amount of fees received by them respectively in the year ending on the first day of *October* then next preceding; and in case it shall appear by such account that the amount of such fees shall exceed the said sum of one thousand five hundred pounds or one thousand three hundred pounds respectively, the said Court of Exchequer, or the Lord Chief Baron or other barons to be nominated and appointed as aforesaid, shall make an order for the payment of the surplus beyond such sum into the Bank of *England*, to the account of the said Redemption Fund, in manner aforesaid; and it shall be lawful for the said court, or for the Lord Chief Baron or other baron to be nominated and appointed as aforesaid, to make any such order or orders, with respect to the ascertaining the amount of such fees, and the payment of such surplus, as to such court shall seem fitting and expedient.

Such sum of 65,000*l.* shall be called in, if requisite, to pay the suitors.

XXV. Provided always, and be it further enacted, That if at any time hereafter the whole or any part of the said sum of sixty-five thousand pounds shall be wanted to answer any of the demands of the suitors of the said Court of Exchequer, then and in such case the said court may and shall direct the whole or any part of the surplus, interest, and annual profits hereinbefore directed to be carried to the redemption fund account, and also the whole or any part of the said sum of sixty-five thousand pounds, as the case shall require, to be called in, or the securities on which the same shall be placed to be sold or disposed of, and the produce thereof to be carried to the account of the common and general cash of the suitors of the said court, in order that the suitors of the said court may at all times be paid their respective demands out of the common and general cash belonging to such suitors.

Court of Exchequer shall order what fees may be taken in the offices of the Accountant-General and two masters.

XXVI. And be it further enacted, That such fees, and no other, shall be taken in the offices of the said Accountant-General, and two masters, as shall be ascertained and authorized by any order or orders to be for that purpose from time to time made by the said Court of Exchequer; and that if any person belonging, or who shall hereafter belong to the said offices or any of them, shall presume to take any other fee on account of any business relating to the said offices respectively, than such as shall be so ascertained and authorized, every such person shall be deemed guilty of extortion, and shall and may be liable to be prosecuted for the same by indictment or information, or upon complaint thereof made to the said Court of Exchequer, shall be punished for the same as for a contempt of the court.

Punishing persons forging the hand-writing of the Accountant-General, &c. to a certificate to receive the suitors' effects in the Bank.

XXVII. And be it further enacted, That if any person or persons shall at any time after the passing of this Act forge or counterfeit, or procure to be forged or counterfeited, or willingly aid or assist in the forging or counterfeiting, the name or hand-writing of any Accountant-General of the said Court of Exchequer, or any Lord Chief Baron, or any of the barons of the said court, or of the clerk of the reports, or of any of the cashiers of the said Governor and Company of the Bank of *England*, or of any officer of any other body politic or corporate, or company, whom it may concern, to any certificate, report, entry, indorsement, transfer, declaration of trust, note, direction, authority, receipt, instrument, or writing whatsoever, for or in order to the receiving or obtaining any money or effects of any of the suitors of the said Court of Exchequer; or shall forge or counterfeit, or procure to be forged or counterfeited, or wilfully aid or assist in forging or counterfeiting any certificate, report, entry, indorsement, transfer, declaration of trust, note, direction, authority, receipt, or any instrument or writing in form of a certificate, report, entry, indorsement, declaration of trust, note, direction and authority, receipt, instrument, or writing made or given by such Accountant-General, clerk of the reports, or any of the cashiers of the Governor and Company of the Bank of *England*, or shall utter or publish any such, knowing the same to be forged or counterfeited, or shall claim or demand payment of any sum or sums of

No. XXV. 1 George IV. c. 35.

money therein mentioned, with intent to defraud any person or persons, or body politic or corporate, or any public company whomsoever, then every such person and persons so offending, being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

Saving the rights of the King's Remembrancer, or his deputy, and the respective clerks, in matters not provided for by this Act.

XXVIII. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to affect, alter, or diminish any rights, privileges, or emoluments of the King's Remembrancer of the said court or his deputy, or the two secondaries, or the sworn clerks, or the clerks in their respective divisions, in respect of or in relation to any matters or things to be done by the said King's Remembrancer or his deputy, or the said two secondaries, or the said sworn clerks, or the clerks in their respective divisions, not especially provided for by this Act; any thing in this Act contained to the contrary thereof in anywise notwithstanding.

Expenses of passing this Act.

XXIX. And be it further enacted, That out of the interest and dividends of the said government or parliamentary securities, to be purchased as aforesaid, the expenses incurred in procuring and passing this Act, and the costs, charges, and expenses of all proceedings had or to be had in consequence thereof, shall be paid by the Governor and Company of the Bank of *England*, by virtue of any order or orders of the said Court of Exchequer, or of the Lord Chief Baron or other Baron to be nominated and appointed as aforesaid, to be made for that purpose.

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## [ No. XXVI. ] 1 & 2 George IV. c. 48.—An Act to amend the several Acts for the regulation of Attornies and Solicitors. [8th *June* 1821.]

2 G. 2. c. 23.

WHEREAS by an Act passed in the second year of the reign of his late Majesty King *George* the Second, intituled *An Act for the better Regulation of Attornies and Solicitors*, it was among other things enacted, that from and after the time in the said Act mentioned, no person should be permitted to act as an attorney or solicitor respectively, in any of the Courts of Law or Equity in *England* in the said Act mentioned, unless such person should have been bound by contract in writing to serve as a clerk for and during the space of five years to an attorney or solicitor respectively, duly and legally sworn and admitted, as in the said Act is directed, in some or one of the Courts of Law or Equity in *England* in the said Act mentioned; and that such person for and during the said term of five years should have continued in such service: And whereas by an Act passed in the twenty-second year of the reign of his said late Majesty King *George* the Second, for making further regulations (among other things) with respect to attornies and solicitors, it was enacted, that every person who should so have been bound to serve any attorney or solicitor should, during the whole time of such service, continue and be actually employed by such attorney or solicitor, or his or their agent or agents, in the proper business, practice, or employment of an attorney or solicitor; and also, that every person bound as a clerk as aforesaid, should, before being admitted an attorney or solicitor, cause an affidavit of himself, or of such attorney or solicitor to whom he was bound, to be duly made and filed, that he had actually and really served and been employed in manner aforesaid, during the said whole term of five years: And whereas by an Act passed by the Parliament of *Ireland* in the seventh year of the reign of his Majesty King *George* the Second, intituled *An Act for the Amendment of the Law in relation to Popish Solicitors, and for remedying other Mischiefs in relation to the Practitioners in the several Courts of Law and Equity*, it was enacted, That no person should be admitted an attorney, or licensed to be a solicitor, who shall not have served an apprenticeship for the space of five years at least, to a Six Clerk of the

22 G. 2. c. 46.

7 G. 2. (I.)

No. XXV. 1 & 2 G. IV. c. 48.

High Court of Chancery in *Ireland*, or to a Six Clerk of the High Court of Chancery in *England*, or to an attorney of one of the other Courts in *Ireland*, or to an attorney or solicitor duly admitted or licensed in that kingdom, or in *England*: And whereas it may happen that persons who have taken or may take the degree of Bachelor of Arts or of Law, in either of the Universities of *Oxford* or *Cambridge*, or of *Dublin*, may afterwards be desirous of becoming attornies or solicitors, but may be deterred by the length of service required for that purpose by the said recited Acts; and it is expedient that the admission of such graduates should be facilitated, in consideration of the learning and abilities requisite for the taking such degree: And whereas it would tend to the better qualifying of persons to act as attornies and solicitors if part of the said service of five years were allowed to be performed in manner hereinafter mentioned; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, in case any person who shall have taken or who shall take the degree of Bachelor of Arts or Bachelor of Law, either in the University of *Oxford*, or in the University of *Cambridge*, or in the University of *Dublin*, shall, at any time after he shall have taken or shall take such degree, be bound by contract in writing to serve as a clerk, for and during the space of three years, to an attorney or to a solicitor, or to a Six Clerk duly and legally sworn and admitted under the provisions and directions of the said recited Acts of the second year and seventh year of the reign of King *George* the Second, or of this Act, or of any other Act or Acts in force for the regulation of attornies and solicitors, in some or one of the Courts of Law or Equity in the said recited Acts mentioned, and during the said term of three years shall continue in such service, and during the whole time of such three years' service, shall continue and be actually employed by such attorney or solicitor, or Six Clerk, or his or their agent or agents, in the proper business, practice, or employment of an attorney or solicitor, and shall also cause an affidavit, or being one of the people called Quakers, a solemn affirmation of himself, or of such attorney or solicitor, or Six Clerk to whom he was bound as aforesaid, to be duly made and filed, that he hath actually and really so served and been employed during the said whole term of three years, in like manner as is required by the said recited Acts of the second year, and of the seventh year, and of the twenty-second year of the reign of King *George* the Second, with respect to persons by the said Acts required to serve for the term of five years, shall and may be qualified to be sworn, or to take his solemn affirmation, and to be admitted and inrolled as an attorney or solicitor respectively (according to the nature of his service) in the several and respective Courts of Law or Equity, as fully and effectually to all intents and purposes, as any person having been bound and having served five years, is qualified to be sworn, or to take his solemn affirmation, and to be admitted or inrolled under or by virtue of the said recited Acts, or any other Act or Acts for the regulation of attornies or solicitors in *England*; any thing in the said Acts, or any of them, to the contrary in anywise notwithstanding.

Any person who has taken a degree at Oxford, Cambridge, or Dublin, may act as an attorney or solicitor, after having served a clerkship of three years.

II. And be it further enacted, That from and after the passing of this Act, if any person who now is or hereafter shall be bound by contract in writing to serve as a clerk as aforesaid, for the space of five years in manner mentioned by the said recited Acts, or any or either of them, or any other Act now in force relating to the service of persons intended to be admitted as attornies or solicitors in *England* or *Ireland*, shall actually and *bonâ fide* be and continue as pupil to any practising barrister, or to any person *bonâ fide* practising as a certificated special pleader in *England* or *Ireland*, for any part or parts of the said term of five years, not exceeding one year, it shall be lawful for the Judge or other sufficient authority to whom such person shall apply to be admitted as attorney or solicitor as aforesaid, upon affidavit or affirmation of such clerk, and of such barrister or special pleader, to be duly

Persons bound for five years, and serving part of that time, not exceeding one year, with a barrister or special pleader, may be admitted, on applying to a judge or other sufficient authority.

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1 & 2 G. IV.
c. 48.

made and filed, and upon being satisfied that such person so applying for admission had actually and really been and continued with, and had been employed as pupil by such practising barrister or special pleader as aforesaid, (but not otherwise), to admit such person as attorney or solicitor, in like manner as is now done in cases where the clerk has served part of the term of his clerkship with the agent of the person to whom he has been bound.

41 G. 3. c. 79. not to extend to the registrars or solicitors of the Universities, &c.

III. And whereas an Act was made in the forty-first year of the reign of his late Majesty King *George* the Third, intituled *An Act for the better Regulation of Public Notaries in* England, be it enacted, That nothing in the said Act contained shall extend, or be construed to extend, to the registrars or solicitors of the Universities of *Oxford* and *Cambridge*, or to the steward or solicitors of any college or hall within the said Universities, or to the chapter clerk of any cathedral or collegiate church, acting only as such registrars, solicitors, stewards, or chapter clerks.

This Act to extend only to bachelors of arts who have taken their degrees within the periods herein mentioned, &c.

IV. Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to any person who shall have taken or shall take such degree of Bachelor of Arts, unless such person shall have taken or shall take such degree within six years next after the day when such person shall have been or shall be first matriculated in the said Universities respectively; nor to any person who shall take or shall have taken such degree of Bachelor of Law within eight years after such matriculation; nor to any person who shall be bound, by contract in writing, to serve as a clerk to any attorney, solicitor, or Six Clerk, under the provisions of this Act, unless such person shall be so bound within four years next after the day when such person shall have taken such degree.

# PART IV.

## CLASS III.

### *Original Writ—Process—Arrest—Imprisonment—Bail—Appearance*.*

**[ No. I. ] 52 Henry III. c. 23. (Marlebridge).—A remedy against accomptants. Fermors shall make no waste.**

'IT is provided also, That if bailiffs, which ought to make account to their lords, do withdraw themselves, and have no lands nor tenements whereby they may be distrained; then they shall be attached by their bodies, so that the sheriffs, in whose bailiwick they be found, shall cause them to come to make their account.

52 Henry III. c. 23.

'II. Also fermors, during their terms, shall not make waste, *sale*,* nor exile of house, woods, and men, nor of any thing belonging to the tenements that they have to ferm, without special licence had by writing of covenant, making mention, that they may do it; which thing if they do, and thereof be convict, they shall yield full damage, and shall be punished by amerciament grievously.'

* Not in the original.

**[ No. II. ] 13 Edward I. stat. 1. c. 11. (Westminster the Second.)—The master's remedy against their servants, and other accomptants.†**

'CONCERNING servants, bailiffs, chamberlains, and all manner of receivers, which are bound to yield accompt, it is agreed and ordained, That when the masters of such servants do assign auditors to take their accompt, and they be found in arrearages, upon the accompt, all things allowed which ought to be allowed, their bodies shall be arrested, and by the testimony of the auditors of the same accompt, shall be sent or delivered unto the next gaol of the King's in those parts; and shall be received of the sheriff or gaoler, and imprisoned in iron under safe custody, and shall remain in the same prison at their own cost, until they have satisfied their master fully of the arrearages.

13 Edward I. stat. 1 c. 11. In what cases auditors may commit accomptants to prison.

'Nevertheless if any person being so committed to prison, do complain, that the auditors of his accompt have grieved him unjustly, charging him with receipts that he hath not received, or not allowing him expenses, or reasonable disbursements, and can find friends that will undertake to bring him before the Barons of the Exchequer, he shall be delivered unto them; and the sheriff (in whose prison he is kept) shall give knowledge unto his master, that he appear before the Barons of the Exchequer at a certain day, with the rolls and tallies by which he made his accompt; and in the presence of the barons, or the auditors that they shall assign him, the accompt shall be rehearsed, and justice shall be done to the parties, so that if he be found in arrearages,

The accomptant's relief.

* The subjects included in this Class are so intimately connected in themselves, and are so essentially blended in several of the Statutes, that I have found it most convenient to place them together. The Statutes relating to outlawry, real actions, and proceedings against persons having privilege of Parliament, are not included, and are comprised in several Classes relating particularly to those respective subjects. As many Statutes equally affect imprisonment under mesne process and upon execution, the whole subject of imprisonment under civil process is included in the present Class; although those Statutes which relate exclusively to imprisonment under execution would, in other respects, be more regularly inserted in a subsequent Division.

† For the exposition of this Statute see Selw. N. P. Title *Debt*, Sec. 9.

No. II.
13 Edward I. st. 1. c. 11.

'he shall be committed to the *Fleet*, as above is said. And if he flee, 'and will not give accompt willingly, as is contained elsewhere in other 'Statutes, he shall be distrained to come before the justices to make 'his account, if he have whereof to be distrained. And when he cometh 'to the Court, auditors shall be assigned to take his accompt, before 'whom if he be found in arrearages, and cannot pay the arrearages 'forthwith, he shall be committed to the gaol to be kept in manner 'aforesaid. And if he flee, and it be returned to the sheriff that he 'cannot be found, exigents shall go against him from county to county, 'until he be outlawed, and such prisoner shall not be replevisable. 'And let the sheriff or keeper of such gaol take heed, if it be within a 'franchise, or without, that he do not suffer him to go out of prison by 'the common writ called *Replegiare*, or by other means, without assent 'of his master; and if he do, and thereof be convict, he shall be 'answerable to his master of the damages done to him by such his 'servant, according as it may be found by the country, and shall have 'his recovery by writ of debt. And if the keeper of the gaol have not 'wherewith he may be justified, or not able to pay, his superior that 'committed the custody of the gaol unto him, shall be answerable by 'the same writ.'

An exigent against an accomptant.

Escape of an accomptant.

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## [ No. III. ] 13 Edward I. st. 1. c. 24. (Westminster the Second.)—A writ of nusance of a house, &c. levied and aliened to another. A *Quod permittat* and *Juris utrum* for a parson of a church. In like cases like writs be grantable.

13 Edward I. st. 1. c. 24.

A writ of nusance.

'IN cases whereas a writ is granted out of the chancery for the fact of 'another, the plaintiffs from henceforth shall not depart from the 'King's Court without remedy, because the land is transferred from one 'to another. And in the register of the chancery there is no special 'writ found in this case, as of a house, a wall, a market, but the writ is 'granted against him that levied the nusance. And if the house, wall, 'or such like be aliened to another, the writ shall not be denied; but 'from henceforth, where in one case a writ is granted, in like case, 'requiring like remedy, the writ shall be made as hath been used 'before:

Questus est nobis A. quod B. injuste, &c. levavit domum, murum, mercatum, & alia quæ sunt ad nocumentum, &c.

'And if such things levied be aliened from one to another, the writ 'shall be thus:

Questus est nobis A. quod B. & C. levaverunt, &c.

'II. In like manner as a parson of a church may recover common of 'pasture by writ of *Novel disseisin*, likewise from henceforth his suc- 'cessor shall have a *Quod permittat* against the disseisor or his heir, 'though a like writ were never granted out of the chancery before. 'And in like manner as a writ is granted to try whether land be the free 'alms of such a church, or the lay fee of such a man, even so from 'henceforth a writ shall be made to try whether it be the free alms of 'this church, or of another church, in case where the free alms of one 'church is transferred to the possession of another church. And when- 'soever from henceforth it shall fortune in the chancery, that in one 'case a writ is found, and in like case falling under like law, and 'requiring like remedy, is found none, the clerks of the chancery shall 'agree in making the writ; or adjourn the plaintiffs until the next Par- 'liament, and let the cases be written in which they cannot agree, and let 'them refer themselves until the next Parliament, by consent of men 'learned in the law, a writ shall be made, lest it might happen after that 'the Court should long time fail to minister justice unto complainants.'

Quod permittat

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## [ No. IV. ] 13 Edward I. stat. 1. c. 39. (Westminster the Second.)—The manner to deliver writs to the sheriff to

be executed. The sheriff returneth a liberty where none is. Returning of issues. Resistance of execution of process.

No. IV. 13 Edward I. st. 1. c. 39.

How writs shall be delivered to sheriffs to be executed.

"FORASMUCH as justices, to whose office it belongeth to minister "justice to all that sue before them, are many times disturbed in "due execution of their office, for that sheriffs do not return writs "original and judicial; and also for that they make false returns unto "the King's writs;" 'our Lord the King hath provided and ordained 'That such as do fear the malice of sheriffs, shall deliver their writs 'original and judicial in the open county, or in the rere county where 'the collection of the King's money is; and may take of the sheriff 'or under-sheriff, being present, a bill, wherein the names of the de-'mandants and tenants mentioned in the writ shall be contained; and 'at the request of him that delivered the writ, the seal of the she-'riff or under-sheriff shall be put to the bill for a testimony, and 'mention shall be made of the day of the deliverance of the writ. And 'if the sheriff or under-sheriff will not put his seal to the bill, the witness 'of knights and other credible persons being in presence shall be taken, 'that put their seals to such bill. And if the sheriff will not return 'writs delivered unto him, and complaint thereof being made to the 'justices, a writ judicial shall go unto the justices assigned to take 'assizes, that they shall inquire by such as were present at the deliver-'ance of the writ to the sheriff, if they knew of the deliverance, and 'an inquest shall be returned. And, if it be found by the inquest, that 'the writ was delivered to him, damages shall be awarded to the plain-'tiff or demandant; having respect to the quality and quantity of the 'action, and to the peril that might have come to him by reason of the 'delay that he sustained; and by this mean there shall be remedy when 'the sheriff returneth that the writ came too late, whereby he could not 'execute the King's commandment. Oftentimes also Pleas be delayed 'by reason that the sheriff returneth that he hath commanded the 'bailiffs of some liberty which did nothing therein, and nameth liberties 'that never had the return of writs; whereupon our Lord the King hath 'ordained, That the Treasurer of the Exchequer shall deliver to the 'justices in a roll all the liberties in all shires that have return of writs. 'And if the sheriff answer that he hath made return to a bailiff of 'another liberty than is contained in the said roll, the sheriff shall be 'forthwith punished as a disheritor of our Lord the King and his crown. 'And if peradventure he return that he hath delivered the writ to a 'bailiff of some liberty that indeed hath return, the sheriff shall be 'commanded, that he shall not spare for the aforesaid liberty, but shall 'execute the King's precept; and that he make known to the bailiffs, 'to whom he returned the writ, that they be ready at a day contained in 'the writ, to answer why they did not execute the King's precept. And 'if they come at the day, and acquit themselves, that no return was 'made to them, the sheriff shall be forthwith condemned to the lord of 'the same liberty, and likewise to the party grieved by the delay, for 'to render damages. And if the bailiffs come not in at the day, or do 'come, and do not acquit themselves in manner aforesaid; in every 'judicial writ, so long as the plea hangeth, the sheriff shall be com-'manded that he shall not spare for the liberty, &c. (1). Many times

The sheriff returneth a liberty where none is.

Non omittas propter aliquam libertatem.

(1) This branch concerning the *non omittas* is in affirmance of the common law; 2 Inst. 452. See as to the Nature and Origin of Special Liberties, Gilb. C.B. 25. It is now settled that a writ of *non omittas* may issue to the sheriff in the first instance, and without being preceded by a common writ and a return of the sheriff *Mandavi Ballivo* thereon; Caurrett *v.* Smallpage, 9 East, 330; in which it was ruled, that no action could be maintained by the bailiff of the liberty against the party suing out such writ. In Grant *v.* Bagge, 3 East, 128. Trespass was maintained against the bailiff of the Isle of Ely, for executing a writ of Fi. Fa. directed to him in the first instance by the court of B. R. In Bowring *v.* Pritchard, 14 E. 289, a defendant arrested by a writ directed in the first instance to the bailiff of Southwark, was discharged out of custody.

No. IV.
13 Edward I. st. 1. c. 39.

The sheriff's defaults in returning of issues.

'also sheriffs make false returns as touching these articles, *Quod de exitibus, &c.* returning sometime and lying, that there be no issues, 'sometime that there are small issues, when they may return great, and 'sometimes do make mention of no issues; wherefore it is ordained 'and agreed, That if the plaintiff demand hearing of the sheriff's return, 'it shall be granted him; and if he offer to aver that the sheriff might 'have returned greater issues unto the King, he shall have a writ judi-'cial unto the justices assigned to take assizes, that they shall inquire in 'presence of the sheriff (if he will be there) of what and how great 'issues the sheriff might have made return from the day of the writ 'purchased unto the day contained in the writ. And when the inquest 'is returned, if he have not afore answered for the whole, he shall be 'charged with the overplus by the extreats of the justices delivered in 'the Exchequer, and nevertheless shall be grievously amerced for the 'concealment. And let the sheriff know that rents, corn in the grange, 'and all moveables (except horse, harness, and household-stuff) be con-'tained within the name of *Issues*. And the King hath commanded 'that the sheriffs shall be punished by the justices once or twice (if need 'be) for such false returns; and if they offend the third time, none shall 'have to do therewith but the King. They make also many times false 'answers, returning that they could not execute the King's precept for 'the resistance of some great man; wherefore let the sheriffs beware 'from henceforth, for such manner of answers redound much to the 'dishonour of the King. And as soon as his bailiffs do testifie that 'they found such resistance, forthwith all things set apart (taking with 'him the power of the shire) he shall go in proper person to do execu-'tion; and if he find his under-bailiffs false, he shall punish them by 'imprisonment, so that other by their example may be reformed; and 'if he do find them true, he shall punish the resisters by imprisonment, 'from whence they shall not be delivered without the King's special com-'mandment. And if percase the sheriff when he cometh do find resistance, 'he shall certifie to the court the names of the resisters, aiders, consenters, 'commanders, and favourers, and by a writ judicial they shall be attached 'by their bodies to appear at the King's court: And if they be convict 'of such resistance, they shall be punished at the King's pleasure. 'Neither shall any officer of the King's meddle in assigning the punish-'ment, for our Lord the King hath reserved it specially to himself, because 'that resisters have been reputed disturbers of his peace, and of his realm.'

What shall be accounted issues.

The sheriff returneth that there was disturbance of execution of process.

## [ No. V. ] 12 Edward II. stat. 1. c. 5.—An Indenture shall be made between the Sheriff and Bailiff of Liberty of every Return.

12 Edward II. st. 1. c. 5.

"AND because it is many times complained in the King's Courts "upon Returns, that bailiffs of franchises (having full power to "return the King's writs) have delivered to sheriffs, that have been after "changed, and otherwise returned into the King's Court, to the great "damage of some of the parties, and the delay of rights;" 'it is agreed, 'That of returns which hereafter shall be delivered to the sheriffs by 'bailiffs of such franchises, an indenture shall be made between the bai-'liff of the franchise by his proper name, and the sheriff by his proper 'name. And if any sheriff change the return so delivered to him by 'indenture, and be thereof convict at the suit of the lord of the fran-'chise, of whom he received the return, if the lord have had any damage, 'or if his franchise be imblemished, and at the suit of the party that 'hath sustained loss through that occasion, he shall be punished by the 'King for his false return, and shall yield unto the lord and to the party 'double damages. Also it is agreed, That from henceforth sheriffs, and 'other bailiffs that receive the King's writs returnable in his court, shall 'put their own names with the returns, so that the court may know of 'whom they took such returns, if need be. And if any sheriff or other 'bailiff leave out his name in his return, he shall be grievously amerced 'to the King's use.'

Sheriffs and bailiffs shall set their names to their returns.

## [ No. V.a. ] 1 Edward III. stat. 1. c. 5.—An Averment may be made against false Returns of Bailiffs of Liberties.

No. V.a. 1 Edw. III. st. 1. c. 5.

'ITEM, it is provided and established, That from henceforth against 'the false returns of bailiffs of franchises, which have full return of 'writs, a man shall have averment, and recover as well against them as 'against the King's sheriff, as well of two little issues returned as in other 'cases, so that it falleth not in prejudice of the lords, nor in the blemish 'of their franchise; and that the estate of holy church be always saved. 'And that all the punishment fall only upon the bailiffs, by punishment 'of their bodies, if they have not whereof to answer.'

## [ No. VI. ] 25 Edward III. stat. 5. c. 17.—Process of Exigent shall be awarded in Debt, Detinue, and Replevin.

25 Edward III. st. 5. c. 17.

'ITEM it is accorded, That such process shall be made in a writ of 'debt and detinue of chattels, and taking of beasts, by writ of '*capias*, and by process of exigent by the sheriff's return, as is used in a 'writ of accompt.'

## [ No. VII. ] 50 Edward III. c. 5.—None shall arrest Priests or Clerks doing Divine Service.

50 Edward III. c. 5.

"ITEM, because that complaint is made to our Lord the King by the "clergy of his said realm of *England*, that as well divers priests "bearing the sweet body of our Lord Jesus Christ to sick people, and "their clerks with them, as otherwise divers other persons of holy "church, whiles they attend to divine services in churches, churchyards, "and other places dedicated to God, be sundry times taken and arrested "by authority royal, and commandment of other temporal lords, in "offence of God, and of the liberties of holy church, and also in dis-"turbance of divine services aforesaid;" 'the same our Lord the King, 'who would be sore displeased if any did in such manner, will and 'granteth, and defendeth upon his grievous forfeiture, that none do the 'same from henceforth, so that collusion or feigned cause be not found 'in any of the said persons of holy church in this behalf.'

## [ No. VIII. ] 1 Richard II. c. 12.—A Prisoner by Judgment shall not be let at large. Confession of a Debt to the King to delay another's Execution.

1 Richard II. c. 12.

"ITEM, whereas divers people, at the suit of the party commanded to "the prison of the *Fleet*, by judgment given in courts of our Lord "the King, be oftentimes suffered to go at large by the warden of the "prison, sometime by mainprise or by bail, and sometimes without any "mainprise with a baston of the *Fleet*, and to go from thence into the "country about their merchandises and other their business, and be "there long out of prison nights and days, without their assent at whose "suit they be judged, and without their gree thereof made, whereby a "man cannot come to his right and recovery against such prisoners, to "the great mischief and undoing of many people;" 'It is ordained and 'assented, That from henceforth no warden of the *Fleet* shall suffer any 'prisoner there being by judgment at the suit of the party, to go out of 'prison by mainprise, bail, nor by baston, without making gree to the 'said parties of that whereof they were judged, unless it be by writ or 'other commandment of the King, upon pain to lose his office, and the 'keeping of the said prison. And moreover, if any such warden from 'henceforth be attainted by due process, that he hath suffered or let 'such prisoner to go at large against this ordinance, then the plaintiffs 'shall have their recovery against the same warden by writ of debt.

The penalty of the warden of the Fleet, if he suffer a prisoner being there by judgment, to go at large.

No. VIII. 1 Richard II. c. 12.

The penalty of him who confesseth a debt due to the king, to delay another's execution.

'And also it is ordained, That if any at the suit of the party judged to 'another pri on for debt, trespass, or other quarrel, will confess himself 'voluntarily, and by a feigned cause, debtor to the king, and by that 'means to be judged to the said prison of the *Fleet*, there to have greater 'sweet of prison than elsewhere, and so to delay the party of his reco-'very; the same recognizance shall be there received, and if he be not 'debtor to the King of record, his body shall incontinently be remanded 'to the prison where he was before, there to remain till he hath made 'gree to the said party, and the same gree made, he shall be immediately 'sent again to the *Fleet*, there to abide, till he hath made gree to the 'King of his recognizance aforesaid.'

## [ No. IX. ] 1 Richard II. c. 15.—The Penalty for arresting of Priests during Divine Service.

1 Richard II. c. 15.

"ITEM, because that prelates do complain themselves, that as well "beneficed people of holy church, as other, be arrested and drawn "out as well of cathedral churches, as of other churches and their "churchyards, and sometime whiles they be intending to divine services, "and also in other places, although they be bearing the body of our "Lord Jesus Christ to sick persons, and so arrested and drawn out, be "bound and brought to prison against the liberty of holy church:" 'It 'is ordained, That if any minister of the king, or other, do arrest any 'person of holy church by such manner, and thereof be duly convict, he 'shall have imprisonment, and then be ransomed at the King's will, and 'make gree to the parties so arrested; provided always, That the said 'people of holy church shall not hold them within the churches or sanc-'tuaries by fraud or collusion in any manner. And therefore we com-'mand, That thou cause all the said statutes to be cried and published, 'and firmly kept through thy bailiwick, according to the form and 'tenour thereof, and that do not omit in any wise. Given under the 'witness of our Great Seal the first day of *February*, in the first year of 'our reign.'

## [ No. X. ] 23 Henry VI. c. 9.—No Sheriff shall let to ferm his County or any Bailiwick. The Sheriffs' and Bailiffs' Fees and Duties in several Cases *.

* This act, which relates to the general administration of justice, has certainly all the marks and characters which can distinguish a public act; notwithstanding which, it was, in several cases, regarded as a private one, and as such was regularly considered in practice for a long space of time: but to the series of authorities in support of this doctrine, there was one exception in the case of Mills *v.* Bond, 1 Str. 399; and upon the general question coming before the Court of King's Bench, in Samuel *v.* Evans, 2 T. R. 549, it was ruled upon the authority of the before mentioned case to be a public act.---Mr. J. Ashurst, in giving his opinion upon that occasion, said,

"If all the cases on this subject were on one side, however apparently contrary to reason they might be, the court would be bound by them: but if there are several cases which are not reconcileable to reason on one side, and one sensible case to the contrary, we ought to decide according to the latter. Now, there can be no doubt on the reason of the thing, but that this is a general law; and the case in *Strange* corroborating the opinion that it is so, we might determine it to be such, independent of the authority of another act, which unquestionably makes it a general law."

In a former publication I availed myself of the opportunity of this passage, to express my sentiments respecting the general propriety of correcting erroneous precedents; and as the subject is of great importance, I shall take the liberty of inserting the observations which then occurred to me.

"I have always regarded this sentiment as stopping short of the true principle, by which the exertion of judicial authority ought to be regulated: and if a court possesses the authority of correcting an established doctrine, supported by several cases which are not reconcileable to reason, because there is one sensible precedent to the contrary, I cannot see any material obstacle to their setting the example of that sensible precedent themselves. The authority of the court is the same to-day as yesterday; in the 44th of Geo. III. as in the 6th of George I.; and it is very difficult to understand the logic, by which it would be wrong for a court to correct an erroneous opinion

No. X.
23 Henry VI.
c. 9.

None of the sheriffs' officers shall be returned upon inquests.

'ITEM, the King considering the great perjury, extortion, and op-
'pression which be and have been in this realm by his sheriffs,
'under-sheriffs, and their clerks, coroners, stewards of franchises, bai-
'liffs, and keepers of prisons, and other officers in divers counties of
'this realm, hath ordained by authority aforesaid, in eschewing of all
'such extortion, perjury, and oppression, that no sheriff shall let to
'ferm, in any manner, his county, nor any of his bailiwicks, hundreds,
'nor wapentakes; nor that the said sheriffs, under-sheriffs, bailiffs of
'franchises, nor any other bailiff, shall return, upon any writ or precept
'to them directed to be returned, any inquests in any panel thereupon to
'be made, any bailiffs, officers, or servants to any of the officers afore-
'said, in any panel by them so to be made; nor that any of the said
'officers and ministers, by occasion, or under colour of their office,
'shall take any other thing by them, nor by any other person to their
'use, profit, or avail, of any person by them, or any of them, to be
'arrested or attached, nor of any other for them, for the omitting of
'any arrest or attachment to be made by their body, or of any person
'by them or any of them, by force or colour of their office, arrested or
'attached, for fine, fee, suit of prison, mainprise, letting to bail, or
'shewing any case or favour to any such person so arrested, or to be
'arrested, for their reward or profit, but such as follow; (1) that is to
'say, For the sheriff xxd.; the bailiff which maketh the arrest or attach-
'ment, fourpence, and the gaoler, if the prisoner be committed to his
'ward, fourpence; And that the sheriff, under-sheriff, sheriff's clerk,
'steward or bailiff of franchise, servant of bailiff or coroner, shall not
'take any thing by colour of his office, by him nor by any other person
'to his use, of any person for the making of any return or panel, and for
'the copy of any panel, but ivd And that the said sheriffs, and all other
'officers and ministers aforesaid, shall let out of prison (2) all manner of
'persons by them or any of them arrested, or being in their custody, by
'force of any writ, bill, or warrant in any action personal, (3) or by cause

Fees for arrests and attachments.

Fees for the copy of a panel.

What persons may be bailed, what not.

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to-day; but if themselves, or any other court of concurrent authority, had been guilty of that wrong to-day, it would become right to follow the example to-morrow. Would it not place the administration of justice upon a more respectable basis, if it were to be held that reason and justice should be regarded as its first, and precedent as only its secondary principle, than to reverse the disposition, and to sacrifice the former at the shrine of the latter? Admitting most willingly the beneficial effects of precedents, in fixing and ascertaining principles; assenting to the impropriety of lightly renewing discussions upon topics, with respect to which reason may fairly hesitate in its decision, and certainty of determination is more beneficial than a particular conclusion on either side; objecting to the subversion of confessedly erroneous opinions, when they have so incorporated themselves with the juridical system, as not to admit of separation without inducing injurious consequences; the only proposition which I endeavour to establish, or rather to enforce, is, that the acknowledged conclusions of reason and justice shall be admitted to prevail over the accidental sanction of error by precedent, when no important reason of public utility requires an opposite determination."

See the reference to cases, as to the statute being public or private, in Williams's Notes to 2d Saunders, 155 a.

(1) In Martin *v.* Slade, 2 N.R. 60, the court of C. B. were clearly of opinion, that the regulations of this statute could not now be considered as giving the rule for the fees to be taken. But ruled contra Dew *v.* Parsons, 2 B. & A. 562.

(2) If the defendant tender a bail-bond, with sufficient sureties, and the sheriff refuse to accept it, he is liable to a special action in the case: but not to an action of trespass, for the refusal does not make him a trespasser *ab initio*. See authorities cited Williams's Note, 2 Saund. 61. c. (5.); and the action does not lie against the bailiff who refuses, but it must be against the sheriff, 2 Mod. 32, Smith *v.* Hall.

(3) In Rex *v.* Daws, 2 Salk. 608; Lord Raym. 722, it was held, that the sheriff might take a bail-bond in an attachment for a contempt, but that the prosecutor might refuse to accept it: but the right to take such bail-bond has been since overruled. The following note was added by the editor to the case of Rex *v.* Daws, in the sixth edition of Salkeld: "In Field *v.* Workhouse, Com. 264, the defendant pleaded that the bond was taken by the sheriff in an attachment for contempt of C. B., and void by statute 23 Hen. VI., and had judgment. King, Ch. J. said, that upon an attachment of privilege, attachment upon a prohibition, or attachments in process upon a penal statute, the sheriff might take bail, but not upon an attachment for a contempt. In Say *v.* Ellis, 2 Bl. Rep. 955, it appearing on oyer of a bond, that the condition was to answer a contempt in the

No. X.
23 Henry VI. c. 9.

The conditions of the bail-bond.

'of indictment of trespass, (1) upon reasonable sureties of sufficient 'persons, (2) having sufficient within the counties where such persons be 'so let to bail or mainprise, to keep their days in such place as the said 'writs, bills, or warrants shall require. Such person or persons which be 'or shall be in their ward by condemnation, execution, *capias utlagat'* 'or *excommunication*, surety of the peace, and all such persons which 'be or shall be committed to ward by special commandment of any 'justice, and vagabonds refusing to serve according to the form of the 'statute of labourers only except. And that no sheriff, nor any of the 'officers or ministers aforesaid, shall take or cause to be taken, or make, 'any obligation for any cause aforesaid, or by colour of their office, but 'not only to themselves, (3) of any person, nor by any person which 'shall be in their ward by the course of the law, but by the name of 'their office, (4) and upon condition written, that the said prisoners shall 'appear at the day contained in the said writ, bill or warrant, and in 'such places as the said writs, bills or warrants shall require. (5) And if

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Court of Chancery, the defendant demurred. The court thought if there was any ground of exception, he should have pleaded facts sufficient to bring the question before the court, and gave him leave to plead, and judgment was afterwards signed for want of a plea. In Studd *v.* Acton, 1 H. B. 468, it was ruled on demurrer, that an action cannot be maintained against a sheriff for refusing to take bail upon an attachment out of Chancery for a contempt. The court did not give an opinion whether the sheriff had a right to take bail; vide Danby *v.* Lawson, Pre. Ch. 110; Eq. Ab. 350; Bland *v.* Riccard, 3 Leon. 208; Anon. 1 Str. 479; 1 Ventr. 231; 2 Ventr. 238."

(1) It was ruled in Bengough *v.* Rosseter, 4 T. R. 505, and on error, 2 H. Bl. 418, that a sheriff cannot take a bail-bond upon an indictment at the Quarter Sessions, and that this provision related only to indictments at the torn, and is in effect repealed by 1 Ed. IV. c. 2, by which it is enacted, that the sheriff shall not proceed in any such indictment at the torn, but shall remove it to the next Sessions of the Peace. A very strong and elaborate opinion was expressed to the contrary in the Exchequer Chamber by Eyre, C. J. In the King's Bench, it was said by the court that it was the sheriff's duty to have taken a recognizance.

(2) This clause was made for the benefit of the sheriff; and therefore, though he may insist upon two sureties, yet he may take a bond with one surety only. Sir William Drury's Cases cited, 10 Rep. 100 b., and other cases referred to in Williams's Note to 2 Saund. 61.

(3) An undertaking to the bailiff of the sheriff is void; Rogers *v.* Reeves, 1 T. R. 418.

(4) In error in debt on bail-bond, it was excepted that it was not shewn that the bond was to the sheriff by the name of his office. The court were of opinion that it should so appear: but they thought that it did sufficiently appear on the whole declaration, it being *solvend' eidem vicecomiti et assignatis.*

(5) The decisions respecting bail-bonds upon this statute are stated in Serjeant Williams's Note to 2 Saunders 60, from which the following is an extract, with the exception of the passages in brackets.

The nature and form of the security required by the second branch of the statute is bond. [The constant usage since the passing of the Act has been to take security by bond: but this is only a simple contract, and not of so high a nature as the security which was intended by the statute; per Ashurst J., Rogers *v.* Reeves, 1 T. R. 418, cited in another point, supra.] The condition of the bond must be for the appearance of the party at the return of the writ, and for no other purpose; so that if there be any other condition expressed in the bond, or the bond be single without any condition at all, or be with an impossible one, [as when it was given on the fourth of November, with conditions to appear on the the third, as in Samuel *v.* Evans,] the bond is void by the statute; 1 T. R. 418; Rogers *v.* Reeves, Cro. Eliz. 862; Cotton *v.* Wale, ibid. 672; Scryvin *v.* Dyther, Dyer 119, 120; 10 Rep. 100 n. b. 101 a.; Beawsages's Case, 3 Lev. 74, 75; Graham *v.* Crawshaw, 1 Str. 399; Mills *v.* Bond, S. C. Fortesc. 363; 2 T. R. 569; Samuel *v.* Evans. But the statute is confined to obligations given to the sheriff, and does not extend to such as are given to or for the benefit of the plaintiff: therefore, when an attorney undertakes to appear for the defendant, he is bound to do so, and the court will enforce a performance of such his contract with the plaintiff by attachment, though his undertaking be not in the form prescribed by the statute; Cro. Eliz. 190; Milward *v.* Clarke, 1 Sid. 132; Benshin *v.* French, S. C. 1 Lev. 98; 1 T. R. 418; Rogers *v.* Reeves. So a bond given to the plaintiff in another form than that which the statute prescribes is valid; 2 Mod. 304, 305. If it appears on the face of the declaration, or upon oyer, that the bond is void by the provisions of the statute, the defendant may demur. but if it do not, he must plead the statute; or if by pleading, or otherwise, the objection appears in any part of the record, he may move in arrest of judgment. [See more as to pleading upon this subject in the note from which these extracts are made, and also Williams's Note, 2 Saunders, 155 a.] The bond must be taken before the return of the writ, otherwise it is void; 1 Ld. Raym. 352; Pullen *v.* Benson. But it is not required

'any of the said sheriffs, or other officers or ministers aforesaid, take any 'obligation in other form by colour of their offices, that it shall be void; 'and that he shall take no more for the making of any such obligation, 'warrant or precept by them to be made, but fourpence. And also that 'every of the said sheriffs shall make yearly a deputy in the King's 'courts of his Chancery, the King's Bench, the Common Pleas, and in 'the Exchequer, of record, before that they shall return any writs, to 'receive all manner of writs and warrants to be delivered to them: And 'that all sheriffs, under-sheriffs, clerks, bailiffs, gaolers, coroners, stew-'ards, bailiffs of franchises, or any other officers or ministers, which do 'contrary to this ordinance in any point of the same, shall lose to the 'party in this behalf indamaged or grieved, his treble damages, and shall 'forfeit the sum of xl. li. at every time that they or any of them do the 'contrary thereof in any point of the same; whereof the King shall have 'the one half, to be employed to the use of his house, and in no other 'wise, and the party that will sue, the other half. And that the justices 'of assises in their Sessions, justices of the one Bench and of the other, 'and justices of peace in their county, shall have power to inquire, hear, 'and determine of office without special commission, of and upon all 'them that do contrary to these ordinances in any article or point of the 'same. And if the said sheriffs return upon any person, *cepi corpus*, or '*reddidit se*, that they shall be chargeable to have the bodies of the said 'persons at the days of the returns of the said writs, bills, or warrants, 'in such form as they were before the making of this Act (1).

No. X. 23 Henry VI. c. 9.

The sheriff shall make deputies in the King's courts.

The forfeitures of the offenders, and who shall have them.

The sheriff returning *cepi corpus*, or *reddidit se*.

'II. Provided always, That the warden of the King's Gaol of the '*Fleet*, and of the King's palace of *Westminster* for the time being, 'shall not be endamaged nor prejudiced by this ordinance in the duty of 'his office. And also that this ordinance shall begin at the Feast of '*Easter* which shall be in the year of our Lord MCCCC xlvi.'

The warden of the *Fleet* and of the palace of *Westminster* exempted.

## [ No. XI. ] 19 Henry VII. c. 9.—Process in Actions upon the Case sued in the King's Bench and Common Pleas.

'FORASMUCH as before this time there hath been great delays in 'actions of the case, that hath been sued as well before the King in 'his Bench, as in his Court of his Common Bench, because of which 'delays many persons have been put from their remedy:' Be it therefore ordained, enacted, and established by the King our Sovereign Lord, by the advice and assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, That like process be had hereafter in actions upon the case, as well sued and hanging, as to be sued, in any of the said courts, as in actions of trespass or debt.

19 Henry VII. c. 9. What process shall be awarded in actions upon the case sued in the King's Bench, or Common Bench.

## [ No. XII. ] 43 Elizabeth, c. 6.—An Act to avoid trifling and frivolous Suits in Law in her Majesty's Courts in *Westminster*.

[This Act given at length in Vol. III.]

[See post, Title *Costs*.—By Section 1, a penalty is imposed upon Sheriffs, making a Warrant for Arrest or Summons until they have received the Writ.]

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by the statute to insert the nature of the action in the conditions of the bond; if it sets forth the parties, and the time and place of appearance substantially, it is sufficient; therefore a mere informality or variance between the condition and process in the description of the action, or of the time and place of appearance, does not vitiate the bond. [See the several cases in support of this position mentioned in the note, to which add Jones *v.* Stordy, 9 E. 55.]

[For the assignment of the bail-bond, see statute 4 Anne, c. 16, ante Part II. Class I. No. 23; and see further as to proceedings on the bail-bond and the assignment thereof, and the summary jurisdiction exercised by the court upon the subject, Williams's Notes, 2 Saund. 61.]

(1) The sheriff is not liable to an action for taking insufficient bail, but is liable to be amerced if he have not the body at the return of the writ; Posterne *v.* Hanson, 2 Saund. 51, (a.); and see Williams's Notes, ibid. in which the duty and liability of the sheriff are fully explained.

No. XIII. 13 Charles II. st. 2. c. 2.

## [ No. XIII. ] 13 Charles II. stat. 2. c. 2.—An Act for Prevention of Vexations and Oppressions by Arrests, and of Delays in Suits of Law *.

The ancient fundamental law in proceeding to arrests upon suits, to express the true cause of action in the process.

'WHEREAS by the ancient and fundamental laws of this realm, in 'case where any person is sued, impleaded or arrested by any 'writ, bill or process issuing out of any of his Majesty's Courts of 'Record at *Westminster*, in any common plea, at the suit of any common 'person, the true cause of action ought to be set forth and particularly 'expressed in such writ, bill or process, whereby the defendant may have 'certain knowledge of the cause of the suit, and the officer who shall 'execute such writ, bill or process, may know how to take security for 'the appearance of the defendant to the same, and the sureties for such 'appearances may rightly understand for what cause they become en-'gaged; and whereas there is a great complaint of the people of this 'realm, that for divers years now last past very many of his Majesty's 'good subjects have been arrested upon general writs of trespass, *Quare* '*clausum fregit*, Bills of *Middlesex*, *Latitats*, and other like writs issued 'out of the courts of the King's Bench and Common Pleas. not express-'ing any particular or certain cause of action, and thereupon kept pri-'soners for a long time for want of bail, bonds with sureties for appear-'ances having been demanded in so great sums that few or none have 'dared to be security for the appearances of such persons so arrested and 'imprisoned, although in truth there hath been little or no cause of 'action; and oftentimes there are no such persons who are named plain-'tiffs, but those arrests have been many times procured by malicious 'persons to vex and oppress the defendants, or to force from them un-'reasonable and unjust compositions for obtaining their liberty; and by 'such evil practices many men have been, and are daily undone, and 'destroyed in their estates, without possibility of having reparation, the 'actors employed in such practices having been (for the most part) poor 'and lurking persons, and their actings so secret, that it hath been found 'very difficult to make true discoveries or proof thereof:'

Persons arrested by process out of the King's Bench or Common Pleas, not expressing the cause of action, how to be bailed and set at liberty, upon their own bonds for appearance.

II. For remedy and prevention of which so great growing evils and mischiefs, and also for discouraging all frivolous and unjust suits, and causeless arrests for the future; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twelfth day of *February*, in the year of our Lord One thousand six hundred sixty and one, no person or persons who shall happen to be arrested by any sheriff, under-sheriff, coroner, steward, or bailiff of any franchise or liberty, or by any other officer, minister, under-bailiff, or other person or persons whatsoever, within this realm, having or pretending to have authority or warrant in that behalf, by force or colour of any writ, bill, or process issuing or to be issuing out of His Majesty's said courts of the King's Bench and Common Pleas, or either of them, in which said writ, bill or process, the certainty and true cause of action is not expressed particularly, (1) and for which the defendant or defendants in such writ, bill or process named, is and are bailable by the statute in that behalf made in the three and twentieth year of the reign of the late King *Henry* the Sixth, shall be forced or compelled to give security, or to enter into bond with sureties, for the appearances of such person or persons so arrested, at the day and place in the said writ, bill or process specified or contained, in any penalty or sum or sums of money, exceeding the sum

23 H. 6. c. 9.

* See Williams's Note, 2 Saund. 52.

(1) This statute (without any such intention in the makers) had liked to have ousted the King's Bench of all its jurisdiction over civil injuries without force; for as the bill of Middlesex was framed only for actions of trespass, a defendant could not be arrested and held to bail thereupon for breaches of civil contracts. But to remedy this inconvenience, the officers of the King's Bench devised a method of adding what is called a clause of *ac etiam* to the usual complaint of trespass; 3 Bl. Comm. 287.

No. XIII. 13 Charles II. st. 2. c. 2.

of forty pounds of lawful money of *England*, to be conditioned for such appearances; and that all sheriffs and other officers and ministers aforesaid shall let to bail and deliver out of prison, and from their and every of their custodies respectively, all and every person and persons whatsoever, by them or any of them arrested upon any such writ, bill or process, wherein the certainty and true cause of action is not particularly expressed, upon security in the sum of forty pounds and no more, given for appearance of such person or persons so arrested unto the said sheriff or officer aforesaid, according to the said statute in the said three and twentieth year of the reign of the said late King *Henry* the Sixth in that behalf made and provided.

III. And be it further enacted by the authority aforesaid, That upon appearance to be entered in the term wherein such writ, bill or process is returnable, with the respective officer in that behalf, for the said person or persons, by attorney or attornies in the said respective courts from whence the said writ, bill or process issued, unto such writ, bill or process, the bond or bonds so given for appearance thereunto, be and are hereby satisfied and discharged; and that after such appearance so entered, no amerciaments be set or estreated upon or against any sheriff or other officer aforesaid, or any other person whatsoever, concerning the want of such appearance; and unless the plaintiff or plaintiffs in any such writ, bill or process named, shall put into the court from whence such writ, bill or process did issue, his or their bill or declaration against the person or persons so arrested, in some personal action, or *ejectione firmæ* of lands or tenements, before the end of the term next following after appearance, that then a nonsuit for want of a declaration may be entered against the said plaintiff or plaintiffs in the said courts respectively; and that every defendant in every such writ, bill or process named, shall or may have judgment to recover costs against every such plaintiff or plaintiffs, to be assessed, taxed and levied in such manner, and according as it is provided by the statute for costs, made in the three and twentieth year of the reign of the late King *Henry* the Eighth; any former or other act, statute, ordinance, law, custom, order, course or usage of either of the said courts, to the contrary thereof heretofore had, made, admitted or used, in any wise notwithstanding.

Bonds (given for) discharged upon appearance.

Nonsuit for want of a declarationbefore the end of the next term after appearance, and judgment and costs against the plaintiff.

23 H. 8. c. 15.

IV. Provided always, That this Act, nor any clause or thing hereinbefore specified or contained, shall not extend, nor be construed or taken to extend, unto any arrests hereafter to be made upon or by virtue of any writ of *capias utlagatum*, attachment upon rescous, or attachment upon any contempt, or of any attachment of privilege at the suit of any privileged person, or of any other attachment for contempt whatsoever, issuing or to be issuing out of either of the said courts, although there be no particular certainty of the cause of action expressed or contained in the said writs; but that nevertheless no sheriff nor under-sheriff, nor any of the officers or ministers aforesaid, shall discharge any person or persons taken upon any writ of *capias utlagatum* out of custody, without a lawful *supersedeas* first had and received for the same: And that upon the said writs of attachment, such lawful course be taken for security for appearance therein as hath been heretofore used; any thing hereinbefore expressed to the contrary thereof in any wise notwithstanding.

Arrests upon *capias utlagatum*, attachments upon rescous, contempts, and of privileges, excepted.

'V. And whereas many persons, out of ill intent to delay their credi-'tors from recovering their just debts, continue prisoners in the *Fleet*, 'who cannot be proceeded against in such manner as they might be, if 'they were at large:' Now for the better enabling all persons to recover their just debts and demands against such prisoners, be it further enacted by the authority aforesaid, That every person or persons whatsoever, who now hath or have, or which at any time hereafter shall have, cause of any personal action against any person being a prisoner in the prison of the *Fleet*, may sue forth an original writ upon his or their cause of action; and that a writ of *habeas corpus* be granted to every such person or persons, being plaintiff or plaintiffs, desiring the same, to be directed to the warden of the same prison to have the body of such prisoner before the justices of the Common Pleas, at some certain day in any

How persons having cause of action may proceed against prisoners in the Fleet.

No. XIII. 13 Charles II. st. 2. c. 2.

term, to answer the said plaintiff or plaintiffs upon his or their said cause of action; and that if the said plaintiff or plaintiffs at the said day, put into the said court his or their declaration, according to the said original writ, against the said prisoner being present at the bar, the said prisoner shall be bound to appear in person, or to put in an attorney to appear for him in the said action; and unless the said defendant plead upon a rule given, to be out at eight days at the least after such appearance, judgment by *nihil dicit* may be entered against such defendant as appearing in person, which shall be good and effectual in law: And such charge in court by declaration, signified by rule unto the said warden, shall be a good cause of detention of such prisoner in his custody, from which he shall not be discharged without a lawful *supersedeas* or rule of court: And if the said warden shall do otherwise, he shall be responsible to the court, and to the party grieved, for damages, by action upon the case to be brought against him for discharging such prisoner.

Delays in suits by reason of 15 days between the teste and return of writs, remedied in actions personal.

'VI. And whereas very many suits commenced by original writs have 'been protracted and long delayed from judgment and execution, by 'reason of the necessity of having fifteen days at the least between the 'days of the *teste* and the days of return of writs now used in personal 'actions, and also in action *ejectione firmæ*, for lands and tenements:' for remedy thereof, and for the more easy expediting trials, and the better and more speedy executing of judgments for the time to come, be it further enacted by the authority aforesaid, That in all actions of debt, and all other personal actions whatsoever, and also in all actions of *ejectione firmæ*, for lands and tenements now depending, or which at any time hereafter shall be depending, by original writ, in either of His Majesty's courts aforesaid, after any issue therein joined to be tried by a jury, and also after any judgment had or obtained, or to be had or obtained in either of the courts aforesaid, in any such action as aforesaid, there shall not need to be fifteen days between the *teste* day and the day of return of any writ or writs of *venire facias*, *habeas corpora juratorum*, or *distringas juratores*, writ of *fieri facias*, or writs of *capias ad satisfaciendum*: And that the want of fifteen days between the *teste* day and the day of return of any such writ, shall not be, nor shall be assigned, taken or adjudged to be, any matter or cause of error; any law, custom, statute, course or usage to the contrary thereof in any wise notwithstanding.

Ejectione firmæ.

Venire facias, habeas corpora juratorum, distringas jurator', fieri facias, capias ad satisfaciendum; where exigent lieth after judgment, or to make the bail appear, excepted.

VII. Provided nevertheless, That this Act, nor any thing therein contained, shall not extend or be construed to extend to any writ of *capias ad satisfaciendum* whereon a writ of exigent after judgment is to be awarded, nor to *capias ad satisfaciendum* against the defendant in order to make any bail liable, but that the same continue and be as if this Act had never been made.

3 Jac. I. c. 8. touching staying executions by supersedeas or writs of error, and in what actions it may be stayed.

'VIII. And whereas by an Act of Parliament made in the third year 'of the reign of our late sovereign Lord King *James* of blessed memory, 'a very good law was made for avoiding unnecessary delays of execu'tion, whereby it is enacted, That no execution shall be stayed or de'layed upon or by any writ of error or supersedeas thereupon to be sued 'for the reversing of any judgment to be given in any action or bill of 'debt, upon any single bond for debt, or upon any obligation with con'dition for payment of money only, or upon any action or bill of debt 'for rent, or upon any contract sued in any of His Highness's courts of 'record at *Westminster*, or in the counties palatine of *Chester*, *Lancas*'ter or *Durham*, or in his Highness' Courts of Great Sessions in any of 'the twelve shires of *Wales*, unless such person or persons in whose 'name or names such writ of error shall be brought, with two sufficient 'sureties, such as the court wherein such judgment is or shall be given, 'shall allow of, shall first, before such stay made, or *supersedeas* to be 'awarded, be bound to the party for whom any such judgment was or 'should be given, by recognizance to be acknowledged in the same 'court in double the sum adjudged, to be recovered by the said former 'judgment, to prosecute the said writ of error with effect, and also to 'satisfy and pay (if the said judgment shall be affirmed) all and singular

'the debts, damages and costs adjudged or to be adjudged upon the 'former judgment, and all costs and damages to be also awarded for 'the same delaying of execution; which law hath been found by expe- 'rience to be very good and beneficial to the commonwealth: And for- 'asmuch as divers other cases within the same mischief, by delays and 'staying of execution by writs of error and *supersedeas* thereupon, are 'not provided for by the said statute:' For further remedy against delays and stayings of executions in the several actions hereafter specified,

No. XIII. 13 Charles II. st. 2. c. 2.

3 Jac. I. c. 8.

IX. Be it further enacted and ordained by the authority aforesaid, That from and after the twentieth day of *January*, in the year of our Lord One thousand six hundred sixty and one, no execution shall be stayed in any of the courts aforesaid, by any writ or writs of error or *supersedeas* thereupon, after any verdict and judgment thereupon obtained; in any action of debt grounded upon the statute made in the second year of the reign of the late King *Edward* the Sixth, for not setting forth of tithes, nor in any action upon the case upon any promise for the payment of money, actions *sur trover*, actions of covenant, detinue and trespass, unless such recognizance, and in such manner as by the said recited former act is directed, shall be first acknowledged in the said court where such judgment is given.

In what actions executions may be stayed (by writ of error) by this statute.

2 and 3 Ed. VI. c. 13.

X. And be it also enacted by the authority aforesaid, That if any person or persons after the said day shall sue or prosecute any writ or writs of error for reversal of any judgment whatsoever given after any verdict in any of the courts aforesaid, and the said judgment shall afterwards be affirmed, then every such person or persons shall pay unto the defendant or defendants in the said writ or writs of error, his or their double costs, to be assessed by the court where such writ of error shall be depending, for the delaying of execution.

The defendant to have double costs for delays of his execution by writ of error.

XI. Provided nevertheless, That this Act, nor any thing therein contained, shall not extend to any action popular, nor unto any other action which is or hereafter shall be brought upon any penal law or statute, (except debt for not setting out tithes as aforesaid) nor to any indictment, presentment, inquisition, information, or appeal: any thing hereinbefore expressed to the contrary thereof notwithstanding.

Popular actions; or upon a penal law, indictments, &c. not within this statute.

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## [ No. XIV. ] 22 and 23 Charles II. c. 20.—An Act for the relief and release of poor distressed prisoners for debt.

22 & 23 Car. II. c. 20.

Enforced by 2 Geo. II. c. 22.

'FORASMUCH as very many persons now detained in prison are 'miserably impoverished, either by reason of the late unhappy 'times, the sad and dreadful fire, their own misfortunes, or otherwise, 'so as they are totally disabled to give any satisfaction to their credi- 'tors, and so become, without advantage to any, a charge and burden 'to the kingdom, and by noisomeness (inseparably incident to extreme 'poverty) may become the occasion of pestilence and contagious dis- 'eases, to the great prejudice of the kingdom, &c.

'IX. And whereas it is found by common experience, That such per- 'son or persons that are under arrests or committed to the custody of 'sheriffs, bailiffs, gaolers, keepers of prisons or gaols, are much abused 'and wronged by extorting of great fees, rewards, and other exactions, 'and put to great expenses under pretences of favour or otherwise, 'whereby they are greatly oppressed, and many times ruined in their 'estates:' For remedy thereof, be it enacted by the authority aforesaid, That if any under-sheriff, bailiff, sergeant at mace, or other officer or minister whatsoever, shall at any time or times hereafter have in his or their custody any person or persons by virtue or colour of any writ, process, or other warrant whatsoever, it shall not be lawful for such officer or officers to convey or carry, or cause to be conveyed or carried, the said person or persons to any tavern, alehouse, or other public victualling or drinking house, without the free and voluntary consent of the

No sheriff, bailiff, or other officer, shall carry any person to any tavern, alehouse, &c. or call for any wine or ale without his free consent;

No. XIV. 22 & 23 Charles II. c. 20.

said person or persons, so as to charge such prisoner with any sum of money for any wine, beer, ale, victuals, tobacco, or any other things whatsoever, but what the said person or persons shall call for of his, her, or their own accord; and shall not demand, take or receive, or cause to be demanded, taken, or received, directly or indirectly, any other or greater sum or sums than what by law ought to be taken or demanded for such arrest, taking, or waiting; (until such person or persons shall have procured an appearance, found bail, agreed with his or their adversaries, or be sent to the proper gaol belonging to the county, city, town, or place, where such arrest or taking shall be) nor take and exact any other reward or gratuity for so keeping the said person or persons out of the gaol or prison, than what he, she or they shall or will of his, her, or their own accord voluntarily and freely give; nor take nor receive any other or greater sum or sums for each night's lodging or other expenses than what is reasonable and fitting in such cases, or shall be so adjudged by the next justice of the peace or at the next quarter sessions; and shall not cause or procure the said person or persons to pay for any other wine, beer, ale, victuals, tobacco, or other things, than what the said person or persons shall voluntarily, particularly, and freely call for.

nor demand or receive greater sum than what by law ought to be taken for waiting.

That all sheriffs, gaolers, &c. shall permit their prisoners to send for necessary food where they please;

nor demand any greater fee for their commitment or discharge than what is allowable.

X. And that every under-sheriff, gaoler, keeper of prison or gaol, and every person or persons whatsoever, to whose custody any person or persons shall be delivered or committed by virtue of any writ or process, or any pretence whatsoever, shall permit and suffer the said person or persons at his and their will and pleasure, to send for and have any beer, ale, victuals, and other necessary food, where and from whence they please, as also to have and use such bedding, linen, and other things as the said person or persons shall think fit, without any purloining, detaining or paying for the same or any part thereof; nor shall demand, take or receive of the said person or persons any other or greater fee or fees whatsoever, for his, her or their commitment, release or discharge, or for his, her or their chamber-rent, than what is allowable by law, until the same shall be settled by three justices of the peace, whereof one to be of the quorum, of each particular county, city and town corporate in their several precincts; and for the city of *London* and counties of *Middlesex* and *Surrey*, the two Lord Chief Justices of the King's Bench and Common Pleas, and the Lord Chief Baron, or any two of them, and the justices of the peace of the same in their several jurisdictions.

That inquiry be made into all charities given for the benefit of poor prisoners.

XI. And likewise that the said Lord Chief Justices, Lord Chief Baron and justices of the peace in their several jurisdictions, and all commissioners for charitable uses, do use their best endeavours and diligence to examine and find out the several legacies, gifts and bequests bestowed and given for the benefit and advantage of the poor prisoners for debt in the several gaols and prisons in this kingdom, and to send for any deeds, wills, writings and books of accounts whatsoever, and any person or persons concerned therein, and to examine them upon oath, and to make true discovery thereof (which they have full power and authority hereby to do,) and the same so found out and ascertained, to order and settle in some manner and way, that the prisoners hereafter may not be defrauded, but receive the full benefit thereof, according to the true intent of the donors.

That the rates of fees, and government of prisons be signed by the Lord Chief Justices, &c. and hung up in every gaol, fairly written.

XII. And that these accounts of the several legacies, gifts and bequests given and bestowed upon the several prisoners for debt within this kingdom, and the several rates of fees and the future government of prisons, be signed and confirmed by the Lord Chief Justices and Lord Chief Baron, or any two of them for the time being, and the justices of the peace in *London*, *Middlesex*, and *Surrey*, and by the judges for the several circuits, and justices of the peace for the time being in their several precincts, and fairly written and hung up in a table in every gaol and prison, before the first day of *November*, One thousand six hundred seventy and one, and likewise be registered by each and every clerk of the peace within his or their particular jurisdiction: And after such establishment

no other or greater fee or fees than shall be so established, shall be demanded or received.

No. XIV. 22 & 23 Charles II. c. 20.

'XIII. And whereas it is become the common practice of the gaolers 'and keepers of *Newgate*, the *Gate-house* at *Westminster*, and sundry 'other gaols and prisons, to lodge together in one room or chamber 'and bed, prisoners for debt and felons, whereby many times honest 'gentlemen, tradesmen and others, prisoners for debt, are disturbed and 'hindered in the night-time from their natural rest, by reason of their 'fetters and irons, and otherwise much offended and troubled by their 'lewd and profane language and discourses, with most horrid cursing 'and swearing, (much accustomed to such persons,') be it enacted by the authority aforesaid, that it shall not be lawful hereafter for any sheriff, gaoler, or keeper of any gaol or prison, to put, keep or lodge prisoners for debt and felons together in one room or chamber; but that they shall be put, kept and lodged separate and apart from one another, in distinct rooms; upon pain that he, she or they which shall offend against this Act, or the true intent and meaning thereof, or any part thereof, shall forfeit and lose his or her office, place or employment, and shall forfeit treble damages to the party grieved, to be recovered by virtue of this Act; any law, statute, usage, or custom to the contrary in any wise notwithstanding. 30 Car. 2.

Felons and prisoners for debt not to be lodged together.

The forfeiture for offending against this act.

## [ No. XV. ] 29 Charles II. c. 7.—An Act for the better observation of the Lord's Day, commonly called *Sunday*.

[See the Statute at length, Part VI. Title *Lord's Day*.]

29 Charles II. c. 7.

VI. PROVIDED also, that no person or persons upon the Lord's Day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment or decree, (except in cases of treason, felony, or breach of the peace) but that the service of every such writ, process, warrant, order, judgment or decree shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all. (1)

Service of process on the Lord's Day shall be void.

## [ No. XVI. ] 4 William and Mary, c. 4.—An Act for taking Special Bails in the Country upon Actions and Suits depending in the Courts of *King's Bench*, *Common Pleas*, and *Exchequer*, at *Westminster*.

(1) The following note upon this subject was subjoined by the Editor to the case of Wilson *v.* Tucker, 1 Salk. 78, in the sixth edition of that work. The addition in brackets contains the cases since decided.

"Before the statute, ministerial acts upon a Sunday were lawful; 9 Co. 660; 2 Cro. 280.; 2 Bul. 72. A defendant arrested on another day and escaping, may be retaken on a Sunday; Mod. Ca. 231. So a person may be taken on an escape warrant; Parker *v.* Moore, 2 Salk. 626: but not after a voluntary escape; Featherstonhaugh *v.* Atkinson, Barn. 373: nor a person arrested and liberated, there being, at the time of the liberation, a detainer at the suit of another person; Atkinson *v.* Jameson, 5 T. R. 25. Bail may seize their principal; Mod. Ca. 231: but not sheriff's bail; Brookes *v.* Warren, 2 Bl. Rep. 1273. A person may be arrested on a Sunday on the Lord Chancellor's warrant, on an order of commitment for a contempt, 1 Atk 55; not upon an attachment for nonperformance of an award, Dut. 1 T. R. 265. A person convicted by justices on a penal statute cannot be apprehended on a Sunday for want of distress; Rex *v.* Myers, 1 T. R. 265." [A rule Nisi, for an attachment for nonpayment of money, cannot be served on a Sunday; M'Ileham *v.* Smith, 8 T. R. 86. Service of notice of plea, filed on a Sunday, is void; Roberts *v.* Makhouse, 8 East. 547. A writ returnable on a Sunday must be executed, at latest, on the Saturday, Leveridge *v.* Plaistow, 2 H. B. 29. The service of any process on Sunday is absolutely void, and cannot be made good by any subsequent waiver, Taylor *v.* Phillips, 3 E. 155.]

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4 W. & M.
c. 4.

Chief Justice, &c. may make any persons, except attornies and solicitors, commissioners to take bail in the country.

FOR the greater ease and benefit of all persons whatsoever, in taking the recognizances of special bails upon all actions and suits depending, or to be depending, in any of the Courts of *King's Bench*, *Common Pleas*, or *Exchequer* at *Westminster*; be it enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the Chief Justice, and other the Justices of the Court of *King's Bench* for the time being, or any two of them, whereof the Chief Justice for the time being to be one for the said Court of *King's Bench*, and the Chief Justice of the Court of *Common Pleas*, and other the justices there for the time being, or any two of them, whereof the Chief Justice of the same court to be one for the said Court of *Common Pleas*, and also the Chief Baron and Barons of the Quoif of the Court of the *Exchequer* for the time being, or any two of them, whereof the Chief Baron for the time being to be one for the said Court of *Exchequer*, shall or may, by one or more commission or commissions under the several seals of the said respective courts, from time to time, as need shall require, impower such and so many persons, other than common attornies and solicitors, as they shall think fit and necessary, in all and every the several shires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick-upon-Tweed*, to take and receive all and every such recognizance or recognizances of bail or bails, as any person or persons shall be willing or desirous to acknowledge or make before any of the persons so impowered, in any action or suit depending or hereafter to be depending in the said respective courts, or any of them, in such manner and form, and by such recognizance or bail-piece, as the justices and barons of the said respective courts have used to take the same; which said recognizance or recognizances, or bail or bail-piece so taken as aforesaid, shall be transmitted to some or one of the justices or barons of the said respective courts where such action or suit shall be depending, who, upon affidavit made of the due taking of the recognizance of such bail or bail-piece by some credible person present at the taking thereof, such justice or baron shall receive the same, upon payment of such fees as have been usually received for the taking of special bails by the justices and barons' clerks, and other the officers of the said respective courts; which recognizance of bail or bail-piece, so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse* before any of the said justices and barons, for the taking of every which recognizance or recognizances of bail or bail-piece, the person or persons so impowered shall receive only the sum or fee of two shillings, and no more.

Justices, &c. to receive the bail-piece upon affidavit of due execution.

Bail taken below to be as *de bene esse*.

Power given to justices, &c. to make rules for justifying, but not to order the person's appearance.

II. And be it further enacted by the authority aforesaid, That the justices and barons respectively in the several courts shall make such rules and orders for the justifying of such bails, and making of the same absolute, as to them shall seem meet, so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in any of the said courts, to justify him or themselves, but the same may and is hereby directed to be determined by affidavit or affidavits duly taken before the said commissioners, who are hereby impowered and required to take the same, and also to examine the sureties upon oath, touching the value of their respective estates, unless the cognizor or cognizors of such bail do live within the cities of *London* and *Westminster*, or within ten miles thereof.

London, &c. saved.

Justices of assize may take bail.

III. And be it further enacted by the authority aforesaid, That any Judge of Assize in his circuit shall and may take and receive all and every such recognizance and recognizances of bail or bails as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall (without oath) be received in manner aforesaid, upon payment of the usual fees.

Felony for any person to be bail in another man's name.

IV. And be it further enacted by the authority aforesaid, That any person or persons who shall before any person or persons impowered by virtue of this Act, as aforesaid, to take bail or bails represent or personate any other person or persons, whereby the person or persons so

represented and personated may be liable to the payment of any sum or sums of money for debt or damages to be recovered in the same suit or action, wherein such person or persons are represented and personated, as if they had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed and taken to be felons, and suffer the pains of death, and incur such forfeitures and penalties as felons in other cases convicted or attainted do by the law of *England* lose and forfeit.

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## [ No. XVII. ] 8 and 9 William III. c. 27.—An Act for the more effectual Relief of Creditors in Cases of Escapes, and for preventing Abuses in Prisons and pretended privileged Places.

8 & 9 William III. c. 27.

'WHEREAS by reason of the many grievous extortions and ill 'practices of such persons who have for several years past re-'spectively executed the offices of Marshal of the *King's Bench*, War-'den of the *Fleet*, and Keeper of the *Marshalsea*, *Newgate*, and other 'prisons, and by several pretended privileged places within this realm, 'both creditors and debtors have been notoriously abused, and the good 'intents of the law wholly eluded:' for reformation thereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of *May*, One thousand six hundred and ninety-seven, all prisoners, either upon contempt or mesne process, or in execution, who are or shall be committed to the custody of the Marshal of the *King's Bench* prison, or Warden of the *Fleet*, shall be actually detained within the said prisons of the *King's Bench* and *Fleet*, or the respective rules of the same, until they shall be from thence discharged by due course of law; and if at any time from and after the said first day of *May*, the said Marshal or Warden, or any other keeper or keepers of any prison, shall permit and suffer any prisoner committed to their custody, either on mesne process or in execution, to go or be at large out of the rules of their respective prisons, (except by virtue of some writ of *Habeas Corpus*, or rule of court, which rule of court shall not be granted but by motion made or petition read in open court), every such going or being out of the said rules shall be adjudged and deemed, and is hereby declared to be an escape.

Prisoners in the King's Bench or Fleet to be detained there or in the rules, &c.

For the mint see 9 Geo. I. c. 28.

II. And be it further enacted by the authority aforesaid, That from and after the said first day of *May*, every person or persons obtaining judgment in any action of escape against the said Marshal or Warden, or their respective lawful deputy or deputies, shall and may have, not only the several remedies already by law allowed for obtaining satisfaction thereon, but the judges of the respective courts where such judgment shall be obtained (upon oath before them made by the person or persons obtaining such judgment, that the same was obtained without fraud or covin, and that the debt of the prisoner making such escape was a true and real debt and unsatisfied) shall, upon motion made to them in open court for that purpose, sequester the fees and profits of the office of Marshal or Warden, of so much, or such part or proportion thereof, as the said court wherein such motion shall be made shall think fit and reasonable, with respect to the debt or debts due from such prisoner or prisoners so escaping, and in the first place apply the same towards satisfaction of the debt or debts due from the prisoner or prisoners who escaped, together with all costs and damages recovered in such action of escape.

Upon judgment in action of escape, marshal or warden's fees to be sequestrated for satisfaction.

III. And, to the end that such satisfaction may not be deferred by any writ of error brought for delay only, be it enacted, That if the said marshal or warden, or their respective deputy or deputies, shall at any time after the said first day of *May* sue forth any writ or writs of error to reverse any judgment given in any action of escape, such marshal or

Marshal, &c. suing a writ of error to reverse judgment, to put in special bail.

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warden, or their respective deputy or deputies, shall be obliged to put in special bail, or in default thereof no execution shall be stayed, nor any sequestration of the profits delayed.

'IV. And whereas it is notorious that divers great sums of money and 'other rewards have been given to, and actually received by, the several 'persons executing the respective offices of marshal and warden, and 'other keepers of the several prisons within this kingdom, to assist or 'permit prisoners in their custody to escape, in open defiance and con-'tempt of the laws of this realm:' For preventing the like evil practice for the time to come, be it further enacted, That if any marshal or warden, or their respective deputy or deputies, or any keeper of any other prison within this kingdom, shall take any sum of money, reward, or gratuity whatsoever, or security for the same, to procure, assist, connive at, or permit any such escape, and shall be thereof lawfully convicted, the said marshal or warden, or their respective deputy or deputies, or such other keeper of any prisons as aforesaid, shall for every such offence forfeit the sum of five hundred pounds, and his said office, and be for ever after incapable of executing any such office.

Penalty on the marshal, &c. taking any reward to connive at prisoner's escape.

V. Provided always, That this Act, nor any thing therein contained, shall extend, or be construed to extend to make void such securities, or any of them, as shall at any time or times hereafter be given by any prisoner or prisoners for his or their lodging or lodgings without the aforesaid prisons, or either of them, within the rules of the said prisons of *King's Bench* and *Fleet*, or either of them, so as such security or securities be not taken for the enlargement of any prisoner or prisoners out of or beyond the rules of the said prisons of *King's Bench* and *Fleet*, or either of them respectively,

This act not to void securities given for lodging within the rules of the said prisons.

VI. And be it further enacted by the authority aforesaid, That from and after the said first day of *May*, no retaking on fresh pursuit shall be given in evidence on the trial of any issue in any action of escape against the said marshal or warden, or their respective deputy or deputies, or against any other keeper or keepers of any other prison or prisons as aforesaid, unless the same be specially pleaded, nor shall any special plea be taken, received, or allowed, unless oath be first made in writing by the marshal or warden, or their respective deputy or deputies, or by such other keeper or keepers of any other prison or prisons as aforesaid, against whom such action shall be brought, and filed in the proper office of the respective courts, That the prisoner for whose escape such action is brought did without his consent, privity, or knowledge make such escape; and if such affidavit shall at any time afterwards appear to be false, and the marshal or warden, or other keeper or keepers of any other prison or prisons, shall be convicted thereof by due course of law, such marshal or warden, or other keeper or keepers of any other prison or prisons, shall forfeit the sum of five hundred pounds.

No retaking on fresh pursuit to be given in evidence on action of escape, unless specially pleaded, &c.

VII. And be it further enacted and declared by the authority aforesaid, That if at any time after the said first day of *May*, any prisoner who is or shall be committed in execution to either or any of the said respective prisons, shall escape from thence by any ways or means howsoever, the creditor or creditors, at whose suit such prisoner was charged in execution at the time of his escape, shall or may retake such prisoner by any new *Capias*, or *Capias ad satisfaciendum*, or sue forth any other kind of execution on the judgment, as if the body of such prisoner had never been taken in execution.

Prisoner in execution escaping, may be retaken by any new *capias*.

VIII. And be it further enacted by the authority aforesaid, That if the said marshal or warden for the time being, or their respective deputy or deputies, or other keeper or keepers of any other prison or prisons, shall, after one day's notice in writing given for that purpose, refuse to shew any prisoner committed in execution to the creditor at whose suit such prisoner was committed or charged, or to his attorney, every such refusal shall be adjudged to be an escape in law.

Keepers refusing to shew prisoner, it shall be an escape.

IX. And be it further enacted by the authority aforesaid, That if any person or persons whatsoever, desiring to charge any person with any

Penalty on marshal, &c.

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action or execution, shall desire to be informed by the said marshal or warden, or their respective deputy or deputies, or by any other keeper or keepers of any other prison or prisons, whether such person be a prisoner in his custody or not, the said marshal or warden, or such other keeper or keepers of any other prison or prisons, shall give a true note in writing thereof to the persons so requesting the same, or to his lawful attorney, upon demand at his office for that purpose, or in default thereof shall forfeit the sum of fifty pounds; (1) and if such marshal or warden, or their respective deputy or deputies exercising the said office, or other keeper or keepers of any other prison or prisons, shall give a note in writing that such person is an actual prisoner in his or their custody, every such note shall be accepted and taken as a sufficient evidence that such person was at that time a prisoner in actual custody.

refusing to give a note whether a person be prisoner, or not.

X. [Conveyances of the King's Bench and Fleet Prison, &c. to be inrolled.]

XI. [Office of marshal and warden of the King's Bench and Fleet to be executed by those who have the inheritance of the said prisons, or their deputies, &c.]

N. B. By stat. 27 George II. c. 17, the marshal of the King's Bench is to be appointed by the Crown.

'XII. And whereas the way of proceeding against the warden of the 'Fleet Prison by bill in the Courts of Common Pleas and Exchequer at 'Westminster, is found to be very dilatory;' be it further enacted by the authority aforesaid, That from and after the said first day of *May*, it shall and may be lawful to and for any person or persons, having cause of action against the warden of the *Fleet* prison, upon bill filed in the said Courts of Common Pleas or Exchequer against the said warden, and a rule being given to plead thereto, to be out eight days at most after filing such bill, to sign judgment against the said warden of the *Fleet*, unless he plead to the said bill within three days after such rule is out.

On bill filed against the warden, &c. judgment to be signed, unless pleaded to.

XIII. And, for the more easy and quick obtaining of judgment against any person or persons who now is or hereafter shall be a prisoner or prisoners in the aforesaid prison of the *Fleet*; be it further enacted by the authority aforesaid, That, from and after the said first day of *May*, it shall and may be lawful to and for any person or persons, who hath or shall have any cause of action against any prisoner or prisoners, who now is or are, or hereafter shall be committed to the said prison of the *Fleet*, after filing or entering of a declaration in such action with the proper officer, to deliver a copy of such declaration or declarations to any such defendant or defendants in any personal action or actions, or to the turnkey or porter of the said *Fleet* prison, and, after rule given thereupon to plead, to be out at eight days at most after delivery of such copy of declaration or declarations, and affidavit made of such delivery before the Lord Chief Justice, or one other of the Justices of the Common Pleas, or before the Lord Chief Baron, or some other of the barons of the coif of the Exchequer at *Westminster*, of the delivery of such declaration or declarations, to the defendant or defendants in such action or actions, or to the turnkey or porter of the said *Fleet* prison, as aforesaid, to sign judgement in such action or actions against such defendant or defendants, as if such defendant or defendants had been actually charged at the bar of the Common Pleas or Exchequer with such action or actions; any law, statute, usage, or custom to the contrary thereof in any wise notwithstanding.

Copy of declaration delivered to prisoner, &c. and affidavit made thereof, plaintiff to sign judgment.

'XIV. And whereas great sums of money have been and are still taken 'of the prisoners of the aforesaid prisons of *King's Bench* and *Fleet*, and 'other prisons, under pretence of chamber rent, although the said pri-'soners have not had the actual possession of any chamber within the 'said prisons, or any of them:' For the avoiding of that inconvenience for the future be it enacted, That from and after the said first day of

No prisoner to pay chamber rent longer than while in actual possession, nor pay

(1) The penalty can only be recovered by action, and not in a summary way; Woodcock *v.* Elpington, 1 Str. 50.

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above 2*s.* 6*d.* per week.

*May*, no prisoner or prisoners shall pay, or be compellable to pay any chamber rent for any chamber within either or any of the said prisons, for any longer time than he or they is or are actually in possession of the said chamber or chambers, and that during such time as he or they is or are actually in possession of any such chamber or chambers within either or any of the said prisons as aforesaid, such prisoner or prisoners shall not pay above the sum of two shillings and sixpence per week for any such chamber; and if the Marshal of the *King's Bench* prison, Warden of the *Fleet*, or keeper or keepers of any other prison or prisons as aforesaid, shall take or demand any greater sum or sums of money for the use of such chamber, than the sum of two shillings and sixpence per week, he or they so taking or demanding shall in such case, for every such offence, forfeit the sum of twenty pounds,

'XV. And for the preventing for the future the many notorious and 'scandalous practices used in many pretended privileged places in and 'about the cities of *London* and *Westminster*, and the borough of *South-'wark* in the county of *Surrey*, by obstructing the execution of legal 'process there, and thereby defrauding and cheating great numbers of 'people of their honest and just debts;' Be it further enacted by the authority aforesaid, That from and after the said first day of *May*, it shall and may be lawful for any person or persons, who have or hath any debt or debts, sum or sums of money due or owing to him from any person or persons who now is, or hereafter shall be and reside within the *White Friars*, *Savoy*, *Salisbury Court*, *Ram Alley*, *Mitre Court*, *Fuller's Rents*, *Baldwin's Gardens*, *Montague Close*, or the *Minories*, *Mint*, *Clink*, or *Deadman's Place*, upon legal process taken out against such person or persons to demand and require the sheriffs of *London* and *Middlesex*, Head Bailiff of the liberty of the duchy of *Lancaster*, or High Sheriff of the county of *Surrey*, or Bailiff of the liberty of the borough of *Southwark* for the time being (as the case shall require, if the plaintiff think it requisite,) or their respective deputy or deputies, officer or officers, to take, and they are hereby enabled respectively to take the *posse comitatus*, or such other power as to him or them, or any of them shall seem requisite, and enter the said pretended privileged places, and any or either of them (as the case shall require) and to arrest, and in case of resistance or refusal to open the doors, to break open any door or doors to arrest such person or persons upon any mesne or other process, extent or execution, or to seize the goods of any such person or persons upon any execution or extent; and if the said sheriff or sheriffs, head-bailiff, or their deputy or deputies, officer or officers, or either or any of them, shall neglect or refuse (upon such request) with such force to do their best endeavours for the executing of such process, execution or extent, he or they so neglecting or refusing to execute such process, execution or extent, shall forfeit to the plaintiff or plaintiffs in such action the sum of one hundred pounds, to be recovered by action of debt, bill, plaint, or information, in which no essoign, protection, or wager of law, or more than one imparlance, shall be allowed; and if in the executing of such process, execution or extent, any person or persons shall oppose or resist any such officer or officers, or any of them, or any who shall be aiding or assisting to him, them, or any of them, in the executing of such process, execution or extent, he or they so offending shall, for every time he or they shall so offend, forfeit the sum of fifty pounds, and moreover shall be by some justice of peace committed to the common gaol of such county, city or place where such offence shall be committed, there to remain without bail or mainprize until the next assizes, sessions of *oyer* and *terminer*, and general gaol delivery, to be held for such county, city or place; and such offender or offenders being of such offence or offences duly convicted, every such offender shall suffer and undergo such imprisonment, and be set in the pillory, as the court where such conviction shall be shall think fit; and if any rescous shall be made of any prisoner taken by any such officer or officers as aforesaid, upon any such process, execution or extent, within the limits of any the before-mentioned pretended privileged places, by any person

Pretended privileged places.

Sheriffs, &c. may take *posse comitatus*, and arrest in the said privileged places, on process, extent, or execution.

Penalty on sheriff, &c. neglecting, &c.

Penalty for rescuing a prisoner.

or persons whatsoever, such person or persons so making such rescous, or aiding, assisting or abetting the same, and being thereof lawfully convicted, shall respectively forfeit to the plaintiff in any such action the sum of five hundred pounds, to be recovered by action of debt, bill, plaint or information, in any of His Majesty's courts at *Westminster*, in which action, bill, plaint or information, no essoign, privilege, protection, wager of law, or more than one imparlance shall be allowed; and if after such recovery had against any person or persons for such rescous, or for aiding, assisting, or abetting the same, the person or persons against whom such recovery shall be had, shall refuse or neglect to pay to the plaintiff in such action, or to his, her, or their executors, administrators, or assigns, the sum or sums recovered, with full costs of suit, within one month after judgment signed upon such recovery, and demand made, that then the person or persons so refusing or neglecting as aforesaid, upon producing a copy of the judgment upon which such recovery shall be had, and oath made that the money recovered is not paid, shall, by order of such court wherein the said person or persons was or were so convicted, of or for any such rescous, or for aiding, assisting or abetting the same, be transported by the sheriff or sheriffs of the county, city or place where such conviction shall happen to be, to one of His Majesty's plantations beyond the seas, there to remain for the space of seven years; and if the person or persons so transported, shall return again to this kingdom within the space of seven years, he, she or they so returning, shall be and is hereby adjudged guilty of felony, and shall not be allowed the benefit of clergy, but shall suffer and forfeit as in cases of felony where clergy is not allowed; and if any person or persons, inhabiting within either or any of the aforesaid pretended privileged places, shall receive, conceal or harbour any person or persons, who shall have made any rescous as aforesaid, he, she or they so receiving, concealing or harbouring any such person or persons knowing or having had notice that such person or persons had been guilty of such offence, being thereof convicted by due course of law, shall be by order of that court where such conviction shall happen to be, by the sheriff or sheriffs of the county, city or place where the offence was committed, transported to some or one of His Majesty's plantations beyond the seas, there to remain for the space of seven years, unless such person or persons shall, within the space of one month next after such conviction, pay to the plaintiff or plaintiffs in such action or suit, the full debt or duty for which such action or suit was brought, with full costs; and if he, she or they shall return into this kingdom within the said space of seven years, he, she or they so returning, shall be and is hereby adjudged guilty of felony, and shall not be allowed the benefit of clergy, but shall suffer and forfeit as in cases of felony where clergy is not allowed.

Person harbouring or concealing rescuer, to be transported for seven years, unless he pay the debt and costs.

XVI. And be it further enacted, That the several penalties before in and by this Act inflicted, and not particularly disposed of, shall go one half to His Majesty, his heirs and successors, and the other half to him or them that will sue for the same, to be recovered as aforesaid.

Penalties how to be disposed of.

XVII. And for the prevention of disputes touching this Act, Be it enacted by the authority aforesaid, that the same and every clause and thing therein contained, shall be deemed, adjudged, and taken to be a general law, and that it shall not be needful to shew or set forth the same or any clause thereof in pleading, and that the same, and all clauses therein, shall be construed most largely and beneficially for the preventing of all the mischiefs, abuses, escapes, and other inconveniences herein provided against; and further, that if any person or persons shall at any time be sued for putting in execution any power or authority given by this Act, such person and persons shall and may plead the general issue, and give in evidence this Act, and the special matter; and if the plaintiff or plaintiffs in such action shall be nonsuit, or a verdict given for the defendant or defendants, or if the plaintiff or plaintiffs discontinue their action, or if upon demurrer judgment shall be given for the defendant or defendants, every such defendant or defendants shall have his or their double costs.

This Act to be a general law.

General issue.

Double costs.

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XVIII. [Right of Martha Johnson, &c. saved.]
XIX. [This Act not to prejudice the securities made by William Lenthall, Esq. to Sir John Cutler, &c.]
XX. [Right of Anthony Smith saved.]
XXI. [Right of Thomas Norwood not to be prejudiced, &c.]
XXII. [Deputations granted by William Lenthall made void, &c.]

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## [ No. XVIII. ] 11 and 12 William III. c. 9.—An Act for preventing of frivolous and vexatious Suits in the Principality of *Wales*, and the Counties Palatine.

[See this Act at length, *post*.]

11 & 12 W. III. c. 9.

No sheriff, &c. in Wales, &c. shall hold persons to special bail,

unless cause of action be 20*l.*

'II. AND whereas the holding of persons inhabiting within the said principality of *Wales*, and counties palatine, to special bail 'in small actions, is oppressive and vexatious to the subject;' For remedy whereof, Be it further enacted by the authority aforesaid, That no sheriff or other officer within the said principality or counties palatine, upon any writ or process issuing out of any of His Majesty's courts of record at *Westminster*, shall hold any person to special bail, unless an affidavit be first made in writing, and filed in that court, out of which such writ or process is to issue, signifying the cause of action, and that the same is twenty pounds and upwards; and where the cause of action is twenty pounds (1) and upwards, bail shall not be taken for more than the sum expressed in such affidavit.

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## [ No. XIX. ] 1 Anne, stat. 2. c. 6.—An Act for the better preventing of escapes out of the *Queen's Bench* and *Fleet* Prisons.

1 Anne, stat. 2. c. 6.

Prisoner in the Queen's Bench or Fleet prison,

'WHEREAS divers persons heretofore legally committed by Her 'Majesty's several courts of record at *Westminster*, to the custody of the Marshal of the *Queen's Bench*, and to the prison of the 'Fleet, upon actions for the recovery of debt, or damages, or for contempts in not performing orders or decrees made in courts of equity, 'and in execution, have by bribes and illegal practices to and with such 'Marshal of the *Queen's Bench*, or to and with the Warden of the said 'prison of the said *Fleet*, or some of their officers or servants, or other 'persons in trust for them, and for their respective uses and benefit, 'frequently procured from such Marshal or Warden liberty to escape 'and go at large without satisfaction made to the respective plaintiffs 'or creditors, and without discharging such debts or satisfying such 'damages, or performing such orders or decrees, as well to the great 'damage of honest creditors, the decrease of personal credit and discouragement of trade, as in open defiance to all good and wholesome laws 'heretofore made to restrain such abuses;' For remedy whereof, and for preventing the like evil practices for the future, Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That if any person or persons already committed, rendered, or charged, or who shall hereafter be committed, or rendered to, or charged in the custody of the Marshal of the *Queen's Bench* for the time being, or to or in the prison of the *Fleet*, either in execution or upon mesne process, or upon any contempt in not performing such order or decree by any of Her Majesty's courts at *Westminster*, and such person or persons shall, at any time after such commitment, render, charge, or being in execu-

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(1) This is not repealed by the general provisions of stat. 12 Geo. I. c. 29. against holding to bail for less than 10*l.*; Smith *v.* Dudley, 2 Str. 1102; Lord Molineux *v.* Charles, Barnes 69; Rayner *v.* Brough, Barnes, 69.

No. XIX. 1 Anne, st. 2. c. 6.

tion, and before he, she, or they shall have made payment or satisfaction to the respective plaintiff or plaintiffs, creditor or creditors, or shall have cleared him, her, or themselves of such contempts, as he, she, or they were, or shall be charged with at the time of such their commitment, render, charge, or being in execution as aforesaid, make any escape from the custody of the Marshal of the *Queen's Bench* for the time being, or from the prison of the said *Queen's Bench*, or from the prison of the *Fleet*, or either of them, or shall go at large, at any time after the three and twentieth day of *January*, which shall be in the year of our Lord One thousand seven hundred and two, it shall and may be lawful upon oath thereof in writing, to be made by one or more credible person or persons, before any one of the judges of that court where such action was entered, or judgment and execution were obtained, or where the party was so committed or charged as aforesaid, to and for such judge before whom such oath shall be made as aforesaid, and such judge is hereby authorised and required, from time to time, to grant unto any person whatsoever who shall demand the same, one or more warrant or warrants under his hand and seal, therein reciting the action or actions, execution or executions, contempt or contempts with which such person or persons so escaping or going at large stood charged, or were committed at the suit of any person or persons on whose behalf such warrant or warrants shall be demanded at the time of such escape, or going at large (which said warrant or warrants shall be in force in all places whatsoever, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick-upon-Tweed*,) directed to all sheriffs, mayors, bailiffs, constables, headboroughs, and tithingmen, therein and thereby commanding them, and every of them, in their respective counties, cities, towns and precincts, to seize and retake (1) such person or persons so escaped, or going at large; and such person or persons so retaken upon such warrant forthwith to convey and commit to the common gaol of such county where such person or persons so escaped or going at large, shall be retaken, there to remain without bail or mainprise, or being thence upon any account whatsoever delivered or removed, until he, she, or they shall have made full payment or satisfaction to the respective plaintiff or plaintiffs, creditor or creditors in such action or actions, execution or executions named, or until the judgment or judgments on which such execution or executions was or were sued out against such person or persons, shall be reversed or discharged by due course of law, or until judgment in such action or actions be given for such person or persons so committed as aforesaid, or until the said contempt or contempts for which such person or persons were or shall be committed, be cleared and discharged; except such person or persons be charged with treason or felony, or any other crime, matter, or cause for and on the behalf of the Queen's Majesty, her heirs and successors; and if he or she, for any such cause, on the behalf of the Queen, her heirs and successors, be removed to any other gaol or prison, he or she shall be, in the custody of such gaol, charged with all the causes with which he or she is or shall be charged in the gaol from whence he or she shall be removed; and every mayor and other officer as aforesaid, after delivery of such prisoner so retaken, together with such warrant, to the sheriff, shall take a note in writing from such sheriff, testifying the receipt of such prisoner, which said sheriff is hereby required to receive such prisoner and give such note; and every such sheriff as aforesaid, after the execution of such warrant, shall forthwith make a return thereof to the court where the action shall be depending, or judgment, order, or decree had or obtained; which shall be entered and filed upon record.

making escape, &c.

on oath thereof judge may grant warrant for retaking such prisoner,

who shall be committed to the county gaol where taken, there to remain, &c.

'By 5 Anne, c. 9. s. 1. such person shall be committed to the prison which the sheriff useth for debtors.'

Exception.

Mayor, &c. after delivery of prisoner, shall take a receipt from sheriff.

Sheriff to make return of warrant, &c.

II. And be it further enacted, That if any such person or persons so

and answer for prisoner escaping, after retaken.

(1) The warrant may be executed on a Sunday; Sir William Moore's case. 2 Ld. Raym. 1028; 2 Salk. 626: and see the next Number, s. 3.

No. XIX.
1 Anne, st. 2. c. 6.

retaken by warrant as aforesaid, shall at any time make any escape out of the gaol to which he, she, or they shall be so conveyed and committed as aforesaid, the sheriff in whose custody he, she, or they was or were, shall be liable to answer for such escape, as in the case of any other escape; any law, usage, or custom to the contrary in any wise notwithstanding.

Prisoner's bail may have a writ to sheriff to detain prisoner, &c.

III. Provided always, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any person or persons, that are or shall be bail in any suit or action in any of her Majesty's Courts of Record at *Westminster*, for any such person or persons that shall be retaken and conveyed to such gaols as aforesaid, by virtue of such warrant as aforesaid, to have and prosecute, out of such of her Majesty's Courts, where he or they are or shall be bail, a writ directed to the sheriff of the county, to the gaol whereof such prisoner so retaken shall be committed and detained, commanding such sheriff to detain and keep such prisoner in custody in discharge of his bail; which writ, with an account whether he hath the said prisoner in his custody, shall be returned by the said sheriff into court, at a day therein to be mentioned, and the delivery of every such writ to the sheriff, or his deputy, shall be deemed and taken to be an effectual render of such prisoner, to all intents and purposes whatsoever, in discharge of the said bail; and that in case such sheriff, his deputy, or other his inferior officer, shall thereafter suffer the person or persons so rendered, in discharge of his, her, or their bail, to escape, they and every of them so offending shall be liable to such action and actions, as the marshal of the *Queen's Bench*, or warden of the *Fleet* prison, is or are liable to, for permitting any person to escape out of his or their custody or prison, who was committed to such custody or prison upon render, in discharge of his, her, or their bail.

Writ to be returned into court, &c.

Sheriff, &c. afterwards suffering prisoner to escape, liable to such action, &c. as marshal or warden, &c.

Penalty on sheriff, &c. neglecting to make return of writ.

IV. And be it further enacted, That all and every such sheriffs, upon request of such person or persons being bail as aforesaid, who shall deliver such writ for keeping and detaining such prisoner as aforesaid, and for the usual fees of returns of actions, shall make, return, and certify, under his hand, the receipt of such writ, and the time thereof, and whether the said person so retaken was then in his custody, and in default thereof shall, for every such default, neglect, or refusal, forfeit the sum of fifty pounds, to be recovered in any of her Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, protection, wager of law, or any more than one imparlance shall be allowed; and that upon producing such return or certificate to the court where such bail shall be taken, such court shall direct and cause a *reddidit se* to be entered upon the bail-piece, which shall be as effectual to all intents and purposes, as if the said bail had then actually rendered the person of the said defendant to such court, or before any judge or judges of the same.

*Reddidit se.*

This Act to be a general law.

V. And for the prevention of disputes touching this Act, Be it enacted by the authority aforesaid, That the same, and every clause and thing therein contained, shall be adjudged and taken to be a general law, and that it shall not be needful to set forth the same in pleading, or any part thereof; and that the same, and every clause therein, shall be construed most beneficially for the preventing of all the mischiefs, abuses, escapes, and other inconveniences herein provided against: And further, That if any person or persons shall, at any time, be sued for putting in execution any power or authority given by this Act, such person or persons shall and may plead the general issue, and give in evidence the special matter: and if the plaintiff or plaintiffs in such action or actions shall be nonsuit, or discontinue his, her, or their action or actions, or a verdict shall be given for the defendant or defendants, or that judgment upon demurrer shall be given for the defendant or defendants, every such defendant or defendants shall have his or their treble costs of suit.

General issue.

Treble costs.

No. XX.
5 Anne, c. 9.

## [ No. XX. ] 5 Anne, c. 9.—An Act for rendering more effectual an Act passed in the first year of her Majesty's Reign, intituled, "An Act for the better preventing Escapes out of the *Queen's Bench* and *Fleet* Prisons."

'WHEREAS the inheritance and custody of several county gaols are in private persons, by means whereof the good intent of a certain 'Act made in the first year of her Majesty's reign, intituled, "An Act 'for the better preventing Escapes out of the *Queen's Bench* and *Fleet* 'Prisons," may be in some counties defeated and eluded;' To the end therefore that the said Act may be rendered more effectual; Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all and every person and persons, who from and after the five and twentieth day of *March*, in the year of our Lord One thousand seven hundred and seven, shall be seized or taken by virtue or authority of the said Act, shall, instead of being committed to the common gaol of the county wherein such person or persons shall be taken, be conveyed and committed to the prison or place where the sheriff of such county detains or keeps the debtors or prisoners for debt or damage, there to remain in the custody of the sheriff of such county, subject to the same rules and directions, and under the same restrictions, regulations, and penalties, and in such manner and form in all and every respect, as if the said person or persons had been committed to the common gaol of the county; and if any person or persons so taken and committed as aforesaid, shall at any time make any escape out of the said prison or place to which he, she, or they be so committed, as aforesaid, the sheriff in whose custody, he, she, or they was or were, shall be answerable for such escape to the party grieved, in like manner as in the case of any other escape.

1 Anne, stat. 2. c. 6.

Persons taken by virtue of 1 Anne, c. 6. to be committed to prison where sheriff keeps prisoners for debt, and remain in sheriff's custody.

Sheriff answerable for escape.

II. And to the intent that the benefit of the said former Act may the more easily be had, in case the person or persons escaping shall be seen in places distant from the City of *London*; Be it further enacted, That it shall and may be lawful to and for any one of the judges of the respective courts in the said former Act mentioned, to grant like warrant and warrants, upon oath in writing to be made before any person commissioned under the seal of the same court to take affidavits in the country, (the same oath being first duly filed) as by the said former Act he is impowered to do upon like oath made before himself.

Escape warrant may be granted upon affidavit made in the country.

III. And be it declared and enacted, That it is and shall be lawful to apprehend and take upon the Lord's Day, any person or persons by virtue of any warrant or warrants granted in pursuance of this or of the said former Act.

Persons may be apprehended by warrant on a Sunday.

IV. And be it further enacted by the authority aforesaid, That if any person or persons is, are, or shall be in custody of any sheriff or other officer, either by virtue of the said Act, or of this present Act, or otherwise, for not performing any decree of the High Court of *Chancery*, or Court of *Exchequer*, whereby any sum or sums of money is ordered or decreed to be paid, and shall afterwards make any escape from the said sheriff or other officer, that then and in such case the person and persons, their executors or administrators, to whom the money was to be paid by the said decree, shall have the same remedy against the said sheriff, as if such person or persons so escaping had been in custody upon an execution at law, and shall and may recover the several sum and sums of money decreed to be paid to him, her, or them in and by such decree, against such sheriff or other officer, together with his, her, or their costs of suit, in any action or actions of debt, or upon the case, to be brought or commenced against such sheriff or other officer in any of her Majesty's Courts of Record at *Westminster*, wherein no protection or wager of law shall be admitted, or any more than one imparlance; any law, usage or custom to the contrary in any wise notwithstanding.

Person in custody of sheriff on a decree, and making his escape, sheriff liable to pay, &c.

No. XX.
5 Anne, c. 9.

Act to be a general law.

V. And for the prevention of disputes touching this present Act; Be it enacted by the authority aforesaid, That the same and every clause and thing therein contained, shall be adjudged and taken to be a general law, and that it shall not be needful to set forth the same in pleading, or any part thereof.

## [ No. XXI. ] 7 Anne, c. 12. (Ambassadors.)—An Act for preserving the Privileges of Ambassadors and other public Ministers of foreign Princes and States.

[For the history and particular occasion of this Act being made, and the privileges secured by it, see 3 Bur. 1478. 1 Blac. Com. 255. 4 Id. 70.]

7 Anne, c. 12. Preamble reciting that the Czar's Ambassador having been arrested,

'WHEREAS several turbulent and disorderly persons having in a most outrageous manner insulted the person of his Excellency *Andrew Artemonowitz Mattueof*, Ambassador Extraordinary of his Czarish Majesty, Emperor of *Great Russia*, her Majesty's good friend and ally, by arresting him, and taking him by violence out of his coach in the public street, and detaining him in custody for several hours, in contempt of the protection granted by her Majesty, contrary to the law of nations, and in prejudice of the rights and privileges which ambassadors and other public ministers, authorized and received as such, have at all times been thereby possessed of, and ought to be kept sacred and inviolable;' Be it therefore declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same, That all actions and suits, writs and processes commenced, sued or prosecuted against the said ambassador, by any person or persons whatsoever, and all bail bonds given by the said ambassador, or any other person or persons on his behalf, and all recognizances of bail given or acknowledged in any such action or suit, and all proceedings upon or by pretext or colour of any such action or suit, writ or process, and all judgments had thereupon, are utterly null and void, and shall be deemed and adjudged to be utterly null and void, to all intents, constructions, and purposes whatsoever.

enacted therefore, that all suits against him should be void.

And all proceedings against him and his bail vacated.

II. And be it enacted by the authority aforesaid, That all entries, proceedings and records against the said ambassador or his bail, shall be vacated and cancelled.

All processes against any public minister, or any of his servants, to be adjudged void for the time to come.

III. And to prevent the like insolences for the future, Be it further declared by the authority aforesaid, That all writs and processes that shall at any time hereafter be sued forth or prosecuted, whereby the person of any ambassador, or other public minister (1) of any foreign prince or state, authorized and received as such by her Majesty, her heirs or successors, or the domestic, or domestic servant (2) of any such

(1) It was held in Heathfield *v.* Chilton, 4 Bur. 2015, to be insufficient to claim a discharge of a defendant, as being servant to the *Minister* of the Prince, Bishop of Liege; that it was necessary to learn in what manner the minister was accredited.—"Certainly," said Lord Mansfield, "he was not ambassador, which is the first rank. Envoy indeed is a second class; but he is not shewn to be even an envoy: he was called minister, it is true, but minister alone is an equivocal term."—The case went off upon a collateral point. Lord Mansfield in that case said, that the law of nations does not take in consuls or agents of commerce, although received as such by the courts at which they are employed; and this point was expressly determined in an elaborate judgment in the very recent case of Viveash *v* Becker, 3 M. & S. 284.

(2) The servant need not lie in the house, although he must do some service there; Evans *v.* Higgs, 2 Str. 797; Widmore *v.* Alvarez, cited ibid. Many cases arose upon claims of privilege, by persons as servants of the Count Haslang, the Bavarian Ambassador, of whom it was said, that although a minister of a very humble rank, he had more domestics registered than the ambassadors of the most potent powers in Europe.—In the first case that occurs, Masters *v.* Manby, 1 Bur. 401, application was made to discharge the defendant, as being his messenger, and it was sworn that he *sometimes* executed service as such. The defendant was a land-waiter at the Cus-

ambassador, or other public minister, may be arrested or imprisoned, or his or their goods or chattels may be distrained, seized, or attached, shall be deemed and adjudged to be utterly null and void, to all intents, constructions, and purposes whatsoever.

No. XXI. 7 Anne, c. 12.

IV. And be it further enacted by the authority aforesaid, That in case any person or persons shall presume to sue forth or prosecute any such writ or process, such person and persons, and all attornies and solicitors prosecuting and soliciting in such case, and all officers executing any such writ or process, being thereof convicted, by the confession of the party, or by the oath of one or more credible witness or witnesses, before the Lord Chancellor, or Lord Keeper of the Great Seal of *Great Britain*, the Chief Justice of the Court of *Queen's Bench*, the Chief Justice of the Court of *Common Pleas* for the time being, or any two of them, shall be deemed violators of the laws of nations, and disturbers of the public repose, and shall suffer such pains, penalties, and corporal punishment, as the said Lord Chancellor, Lord Keeper, and the said Chief Justices, or any two of them shall judge fit to be imposed and inflicted.

Punishment for attornies, &c. suing forth such process.

V. Provided, and be it declared, That no merchant or other trader whatsoever, within the description of any of the statutes against bankrupts, who hath or shall put himself into the service of any such ambassador or public minister, shall have or take any manner of benefit by this Act; and that no person shall be proceeded against as having arrested the servant of an ambassador or public minister, by virtue of this Act, unless the name of such servant be first registered (3) in the office of one of the principal Secretaries of State, and by such secretary transmitted to the Sheriffs of *London* and *Middlesex* for the time being, or their under-sheriffs or deputies, who shall, upon the receipt thereof, hang up the same in some public place in their offices, whereto all persons may resort, and take copies thereof, without fee or reward.

No merchant, &c. to have any benefit of this Act.

Nor the servant of an ambassador, unless his name be registered, &c.

VI. And be it further enacted by the authority aforesaid, That this Act shall be taken and allowed in all courts within this kingdom as a public Act; and that all judges and justices shall take notice of it without special pleading; and all sheriffs, bailiffs, and other officers and ministers of justice, concerned in the execution of process, are hereby required to have regard to this Act, as they will answer the contrary at their peril.

This Act to be taken as a public Act.

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## [ No. XXII. ] 6 George I. c. 21.—An Act for preventing Frauds and Abuses in the public Revenues of Ex- 19.

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tom House, and the court were of opinion, that he could never be deemed a *bona fide* domestic.—In Triquet *v.* Bath, 3 Bur. 1478, the privilege was allowed to the defendant, as English Secretary of the count; the defendant's affidavits being so framed, that every thing was sworn that in absolute strictness could be required, to bring him within the description of a domestic servant; and the court held that it was sufficient if an actual *bona fide* service were proved, and that if such a service were proved, they must not, upon bare suspicion, suppose it to have been merely colourable and collusive.—In Lockwood *v.* Coysgarne, 3 Bur. 1676, the claim of privilege was disallowed to the defendant as the count's physician, as not being a case of *bona fide* service, and the court said, it would be of very bad consequence if protections should be set up for sale, or made use of merely for the sake of screening people from their just debts. In Darling *v.* Atkins, 3 Will. 33, the privilege was disallowed to the count's English secretary, he being purser of a man of war, which was held to be an office incompatible with the situation of secretary to the ambassador.

The ambassador's secretary is privileged, the statute being only explanatory of the law of nations, and the words "domestic, and domestic servant," are only put by way of example; Hopkins *v.* De Robeck, 3 T. R. 79.

(3) The statute only requires the names of the persons privileged to be registered, for the purpose of proceeding against the parties criminally, for a violation of the act, and not for the purpose of exemption from arrest; Hopkins *v.* De Robeck, 3 T. R. 79.

No. XXII. 6 George I. c. 21.

cise, Customs, Stamp-duties, Post-office, and House-money.

Sheriffs, &c. delivering out warrants for arresting persons to attornies, &c. before they have the writs in their custody, shall forfeit 10*l.*

'LIII. AND whereas many under-sheriffs, and other persons acting as such, do make and deliver out blank warrants and other 'warrants to attornies, bailiffs and others, for the arresting and taking 'persons into custody upon mean process, without having any writ or 'writs or other legal process in their custody to justify the same, 'whereby his Majesty's duties are greatly lessened and his subjects 'aggrieved:' for remedy whereof, Be it enacted, That if any high sheriff, under-sheriff, or his or their deputy or deputies, their clerks or agents, shall, at any time or times after the first day of *August* one thousand seven hundred and twenty, make or cause to be made or delivered out to any person or persons whomsoever, any warrant or warrants, either blank or filled up in part or in all, before they or some of them shall actually have in their custody the respective writs upon which such warrants should and ought to issue, that then the several persons so offending, and every of them, shall forfeit the sum of ten pounds for every such offence.

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## [ No. XXIII. ] 12 George I. c. 29.—An Act to prevent frivolous and vexatious Arrests.

12 George I. c. 29.

Explained and amended by 5 Geo. II. c. 27.

None to be held to special bail in a superior court under 10*l.*

Nor in an inferior court, under 40*s.*

I. FOR the more effectual preventing frivolous and vexatious arrests, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand seven hundred and twenty-six, no person shall be held to special bail upon any process issuing out of any superior court, where the cause of action shall not amount to the sum of ten pounds or upwards; (1) nor out of any inferior court (2) where the cause of action shall not amount to the sum of forty shillings or upwards; and that in all cases, where the cause of action shall not amount to the sum of ten pounds or upwards in any such superior court, or to forty shillings or upwards in any such inferior court (and the plaintiff or plaintiffs shall proceed by the way of process against the person) he, she, or they shall not arrest, or cause to be arrested, the body of the defendant or defendants, but shall serve him, her, or them personally, within the jurisdiction of the court, with a copy of the process; and if such defendant or defendants shall not appear at the return of the process or within four days after such return, in such case it shall and may be lawful to and for the plaintiff or plaintiffs, upon affidavit being made, and filed in the proper court, of the personal service of such process as aforesaid (which said affidavit shall be filed *gratis*) to enter a common appearance or file common bail for the defendant or defendants, and to proceed thereon, as if such defendant or defendants had entered his, her, or their appearance, or filed common bail; any law or usage to the contrary notwithstanding.

Not appearing, plaintiff may enter a common appearance, &c.

Where the cause of action amounts higher, affidavit to be made thereof, &c.

II. And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, one thousand seven hundred and twenty-six, in all cases, where the plaintiff or plaintiffs' cause of action shall amount to the sum of ten pounds, or forty shillings or upwards as aforesaid, affidavit shall be made and filed of such cause of action (which affidavit may be made before any judge or commissioner of the court, out of which such process shall issue, authorized to take affidavits in such courts, or else before the officer who shall issue such process, or his deputy, which oath such officer or his deputy are hereby impowered to administer;) and for such affidavit one

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(1) Raised to 15*l.* by stat. 51 Geo. III. c. 124, sec. 1, infra.

(2) This distinction is taken away by stat. 19 Geo. III. c. 70, sec. 1, post.

No. XXIII.
12 George I.
c. 29.

shilling over and above the stamp duties shall be paid, and no more; and the sum or sums specified in such affidavit shall be indorsed on the back of such writ or process, for which sum or sums so indorsed, the sheriff or other officer to whom such writ or process shall be directed, shall take bail, and for no more: But if after the said twenty-fourth day of *June* one thousand seven hundred and twenty-six, any writ or process shall issue for the sum of ten pounds or upwards, and no affidavit and indorsement shall be made as aforesaid, the plaintiff or plaintiffs shall not proceed to arrest the body of the defendant or defendants, but shall proceed in like manner as is by this Act directed in cases where the cause of action does not amount to the sum of ten pounds, or forty shillings or upwards as aforesaid.

III. [Judges of inferior courts may proceed in suits not exceeding 5*l.* though there may be other actions higher.]

IV. [Persons convicted of forgery, &c. practising as attornies, &c. offending against this Act, to be transported.] (1)

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(1) As to the sufficiency of an affidavit to hold to bail, see Tidd's Practice, c. 8. It is an established rule, that in the King's Bench no supplementary or explanatory affidavit can be received on the part of the plaintiff, nor any counter or contradictory one on the part of the defendant. The practice is otherwise in the Common Pleas; as to supplemental affidavits, see Gunham v. Hammond, 2 B. & P. 298, and the cases there cited. and there are *dicta* as to its being otherwise with respect to affidavits in contradiction; but I apprehend that such a practice is allowed, if at all, very sparingly, and there are not any recent traces of it in the Reports.

With respect to the general question, of the justice and propriety of admitting counter affidavits upon the subject, (for which the interposition of the legislature would be required) I have long entertained a very strong opinion in favour of such a measure, and am satisfied that great injustice and oppression are exercised by means of the opportunity which a plaintiff has of depriving a person of his liberty, by an affidavit in common form, to which no contradiction can be received. The small degree of scruple which is often manifested in this, as well as many other cases, with respect to making affidavits in a common form, affords matter for the most serious reflection. There is a common cant maxim, that the courts cannot try the cause upon affidavits; which, like many other cant maxims, has an imposing sound with very little meaning; as the exercise of the judgment of the court, with respect to the measure of extra precaution, can have no legitimate influence upon the verdict which may be afterwards given upon evidence of the facts; and the admitting, with due discretion and moderation, an affidavit on the behalf of the defendant, which might put the plaintiff upon stating, specifically, such facts as would shew the existence of a legal debt by an affidavit, upon which perjury can be distinctly assigned, would be a considerable check upon that random kind of swearing, by which any person who sets up a demand against another, however disputable, with respect either to the facts or the law, is made in the first instance. and so far as relates to the question of arrest, the absolute and conclusive judge of his own case, in a point which may occasion detriment or ruin to the defendant, and has certainly very often the effect of obtaining payment of a demand contrary to the real truth and justice of the case.

It is agreed that the restriction of this Act does not extend to writs upon which bail is directed to be taken by special order of a judge.

Although the statute prevents a person being held to bail in a penal action of debt, there is no such restriction upon a proceeding by information in the Crown Office, where a process of attachment issues. Mr. Chitty, in his Treatise on the Game Laws, mentions this as a circumstance which renders the proceeding by information peculiarly desirable, when the offender is likely to abscond: but however desirable it may be for the objects of a prosecution on the Game Laws, I am very far from thinking, that to allow the continuance of such a practice, and the depriving a party of his liberty for such an alleged offence, is desirable as affecting the real purposes of justice.

For penalties in the Exchequer, a person is arrested upon a process which merely gives him information, in technical language, of the legal offence which he is supposed to have incurred, without having any access to the affidavit upon which the process issues, or any information of the particular manner in which he is charged with having offended, until the case is actually brought to trial; and although no suspicion can be entertained of improper intentions on the part of the officers having the conduct of such proceedings, there may be great room for sinister proceedings in those who may have an interest in communicating to them false information; and the more completely destitute of foundation the accusation may be, the greater difficulty will arise in preparing to meet it. In fact, the being prepared to meet the specific case which is offered at the trial, is not unfrequently urged in argument as shewing a consciousness of its truth. In the course of my own practice, I was lately consulted on behalf of a person imprisoned on a charge of an offence against the revenue, of the ground and foundation of which he assert-

No. XXIV. 2 George II. c. 22.

## [ No. XXIV. ] 2 George II. c. 22.—An Act for the Relief of Debtors with respect to the Imprisonment of their Persons.

[This Act contains provisions for the relief of Insolvent Debtors, similar to those of 32 Geo. II. c. 28. It was a temporary Act, and after different continuances permitted to expire with the exception of Section 13, as to setting off mutual debts. This provision is of so much importance, that it will form the subject of a separate title.] See infra.

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## [ No. XXV. ] 5 George II. c. 27.—An Act to explain, amend and render more effectual an Act made in the twelfth Year of the Reign of his late Majesty, King George the First, intituled, "An Act to prevent frivolous and vexatious Arrests."

5 George II. c. 27.

Recital of 12 Geo. I. c. 29.

'WHEREAS in an Act made in the twelfth year of the reign of his 'late Majesty King *George* the First, intituled, "An Act to pre- 'vent frivolous and vexatious arrests," it is amongst other things 'enacted, That from and after the twenty-fourth day of *June*, which 'was in the year of our Lord one thousand seven hundred and twenty- 'six, no person should be held to special bail upon any process issuing 'out of any superior court, where the cause of action should not 'amount to the sum of ten pounds or upwards, nor out of any inferior 'court, where the cause of action should not amount to the sum of 'forty shillings or upwards; and that in all cases where the cause of 'action should not amount to the sum of ten pounds or upwards in 'any such superior court, or to forty shillings or upwards in any such 'inferior court (and the plaintiff or plaintiffs should proceed by the 'way of process against the person) he, she, or they should not arrest 'or cause to be arrested the body of the defendant or defendants, but 'should serve him, her, or them personally, within the jurisdiction of the 'court, with a copy of the process; and if such defendant or defend- 'ants should not appear at the return of the process, or within four 'days after such return, in such case it should and might be lawful to

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ed his entire ignorance. I had no means of forming an opinion of the veracity of the particular statement, and a verdict passed against the party for the penalty claimed; but I was fully satisfied of the probable effect of the existing practice being such as I have represented, and surely there ought to be very strong motives of public utility to support a general system, which is manifestly capable of admitting so great an abuse: and although, on the one hand, it may be admitted to be an important object to prevent the escape of a guilty person from the claims of justice, it is no less important to guard against the admission of a course of procedure, which may have the effect of unjustly depriving those of their liberty, who, with any reasonable degree of probability, may assert their innocence; and the loss and inconvenience which naturally attend a departure from the kingdom, with a relinquishment of all existing connections and pursuits, is in itself no small security for the party being finally amenable to the exigencies of the law, and is therefore a sufficient reason, not only for using the greatest degree of precaution in individuals, but for affording a greater protection by the law against a previous imprisonment, upon a charge resting upon information, which is not disclosed, and which a person unjustly accused has no means to oppose.

The admitting counter affidavits on the part of defendants, would, I am aware, give a considerable accession of trouble to the judges of the superior courts; but in this, and many other respects, alterations in the law are highly requisite, for the purpose of affording some relief from the great pressure of an accumulated weight of business:—a subject which I shall elsewhere take an opportunity of adverting to more particularly.

I do not think it necessary to refer more particularly to the statutes which require affidavits to hold bail to negative a tender in bank notes, and which are only continued as a temporary measure.

By the law of Scotland no person can be arrested previous to a judgment against him, except upon a warrant from a judge, issued upon an affidavit of the creditor, that he believes his debtor to be in *Meditatione Fugæ*; and the creditor is subject to damages should the circumstances not afford sufficient ground for the application.

No. XXV. 5 George II. c. 27.

'and for the plaintiff or plaintiffs, upon affidavit being made and filed 'in the proper court of the personal service of such process as aforesaid (which said affidavit should be filed *gratis*) to enter a common 'appearance or file common bail for the defendant or defendants, and 'to proceed thereon, as if such defendant or defendants had entered 'his, her, or their appearance, or filed common bail, any law or usage 'to the contrary notwithstanding: And whereas the said process in the 'said Act mentioned is in a language for the most part unknown to 'such defendant or defendants: And whereas such defendant or defendants are to appear at the return of such process, or within four days 'after such return, the shortness of which time hath been found inconvenient in many cases: And whereas affidavit is to be made of the 'personal service of such process, and unnecessary expense and delay 'has been occasioned for want of a sufficient number of persons duly 'authorized to take such affidavits:' For remedy whereof, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the end of this present Session of Parliament, in all cases where the cause of action shall not amount to the sum of ten pounds or upwards in any superior court, or to forty shillings or upwards in any inferior court, the writ, process, declaration and all other proceedings shall be in the *English* tongue, and written in words at length, in a common legible hand and character: and the defendant or defendants in such cases (a copy of such process in *English* having been served, as by the said Act is directed) shall appear at the return thereof, or within eight days after such return, and the affidavit of the service of such process shall and may be made before any judge or commissioner of the court, out of which such process shall issue, authorized to take affidavits in such courts, or else before the proper officer for entering common appearances in such court, or his lawful deputy; and which affidavit is hereby directed to be filed *gratis*.

Process under 10*l.* or 40*s.* respectively, to be in English, and in a common hand.

Defendant to appear within eight days.

Affidavit to be made of the service.

II. Provided always, That no attorney, bailiff or other persons, shall have, take, charge or demand more than five shillings, for the making and serving a copy of such process issuing out of any superior court, or more than one shilling for the making and serving a copy of such process issuing out of any inferior court, on such defendant or defendants respectively as aforesaid.

5*s.* for making and serving copy of process in superior, and 1*s.* in inferior courts.

III. Provided nevertheless, That in particular franchises and jurisdictions the proper officer there shall execute such process

Process in particular franchises.

IV. And be it further enacted by the authority aforesaid, That upon every copy of such process, to be served upon any defendant, shall be written in like manner an *English* notice to such defendant of the intent and meaning of such service, to the effect following, *videlicet*,

A. B. *you are served with this process, to the intent that you may by your attorney appear in his Majesty's court of at the return thereof, being the day of* (1) (as the case shall happen to be) *in order to your defence in this action*; and for which said *English* notice no fee or reward shall be demanded or taken.

Form of English notice to the defendant.

'V. And whereas great and unnecessary expenses have been occa'sioned in small and trifling suits, by the suing forth of special writs;' For remedy whereof be it enacted by the authority aforesaid, That from and after the end of this present Session of Parliament, where the cause of action shall not amount to the sum of ten pounds or upwards in any superior court, or to forty shillings or upwards in any inferior court, no special writ or writs, nor any process specially therein expressing the

No special writs may be issued in smaller suits.

(1) The year, as well as the day of the month, must be in words at length. Rogan *v.* Lee, 1 Marsh, 272.

No. XXV. 5 George II. c. 27.

Penalty on issuing such special writs 10*l.* and costs of suit.

cause or causes of action, shall be sued forth or issued from any such superior or inferior court respectively, in order to compel any person or persons to appear thereon in such court or courts; and all proceedings and judgments, that shall, from and after the end of this present Session of Parliament, be had on any such writ or process, shall be, and is hereby declared to be void and of none effect; and every attorney or officer of such court or courts, suing forth or issuing any such writ or process, shall forfeit the sum of ten pounds to the person or persons aggrieved thereby, who shall and may recover the same by action of debt, bill, plaint, or information, in any of his Majesty's Courts of Record at *Westminster*, together with full costs of suit, in which no essoign, protection or wager of law, shall be allowed, or any more than one imparlance.

These Acts to continue seven years, &c. Made perpetual 21 Geo. 2. c. 3.

'VI. And whereas the said Act hath been found by experience to be 'useful and beneficial,' Be it therefore enacted by the authority aforesaid, That the said Act (except wherein the same is by this present Act explained and amended) shall be and is hereby continued, and shall, together with this present Act, be and remain in full force from the end of this present Session of Parliament, for and during the term of seven years, and from thence to the end of the then next Session of Parliament, and no longer.

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## [ No. XXVI. ] 8 George II. c. 24.—An Act to explain and amend an Act passed in the second Year of the Reign of his present Majesty, intituled, "An Act for the Relief of Debtors with respect to the imprisonment of their Persons."

[See post, Title *Set-off*.]

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## [ No. XXVII. ] 13 George II. c. 18.—An Act to continue several Laws therein mentioned * * * * * for the better and more speedy Execution within particular Franchises or Liberties * * * *

[See Vol. VI. and Vol. VII. for other parts.]

13 Geo. II. c. 18.

Sheriffs to appoint deputies at the request of lords of liberties.

VI. AND, for the better and more speedy execution of process within particular franchises or liberties; be it further enacted by the authority aforesaid, That from and after the third day of *November*, which shall be in the year of our Lord one thousand seven hundred and forty, the sheriff of every shire, being no city or town made a shire, within which there is any franchise or liberty, the lord or proprietor whereof is of right intitled to the return of writs within such franchise or liberty, shall, (if required by any such lord or proprietor) within one month next after such request made to him for that purpose, nominate and appoint one or more sufficient deputy or deputies, at the proper costs and charges of such lord or proprietor, to be resident at some convenient town or place in or near such franchise or liberty, to be for that purpose appointed by the Lord High Chancellor of *Great Britain*, and the Chief Justices of his Majesty's Courts of *King's Bench* and *Common Pleas* for the time being, or any one of them, who is and are hereby authorized and impowered to appoint such convenient town or place, as to him or them shall seem meet, and to settle and direct what costs and charges shall be paid therefore by such lord or proprietor; and such deputy or deputies shall reside at such town or place so to be appointed as aforesaid, and shall have authority in the sheriff's name, and is and are respectively authorized and empowered, to receive and open all such writs and process (the execution or return whereof doth of right belong to the lord or proprietor of any such franchise or liberty), and thereupon in the name, and under the seal of the sheriff, to make and issue out such warrant or warrants to such lord or proprietor as by

law is requisite, for the due execution of such writs or process; and every such deputy or deputies is and are hereby required, upon tender of any such writ or process, to receive and open the same, and to issue out such warrant thereon, without delay, in such manner and form as the sheriff himself may or ought to do, without taking any further or other fee than what is now due and accustomed for such warrant; upon pain that every such sheriff or deputy respectively, who shall be guilty of any wilful neglect or default in the premises, shall be liable to be punished for the same, as for a contempt of one of his Majesty's said courts of *Chancery*, *King's Bench*, or *Common Pleas*, (as the case shall require), and shall likewise make satisfaction to the party or parties that shall receive damage thereby.

No. XXVII. 13 George II. c. 18.

## [ No. XXVIII. ] 20 George II. c. 37.—An Act for the Ease of Sheriffs with Regard to the Return of Process.

FOR the ease of sheriffs with regard to the return of process, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-ninth day of *September*, One thousand seven hundred and forty-seven, all sheriffs of any county, city, liberty, division, town corporate or place, shall, at the expiration of their office, turn over to the succeeding sheriff, by indenture and schedule, all such writs and process as shall remain in their hands unexecuted, who shall duly execute and return the same; and in case any such sheriff shall refuse or neglect to turn over such process in manner aforesaid, every such sheriff so neglecting, or refusing, shall be liable to make such satisfaction by damages and costs to the party aggrieved, as he, she or they shall sustain by such neglect or refusal.

20 George II. c. 37. Process unexecuted, to be turned over;

II. And be it further enacted by the authority aforesaid, That no sheriff shall be liable to be called upon to make a return of any writ or process, unless he be required so to do within six months after the expiration of his said office. (1)

Sheriff not liable to make return after six months.

## [ No. XXIX. ] 32 George II. c. 28.—An Act for the Relief of Debtors with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their Estates for their Creditors' Benefit.*

'WHEREAS many persons suffer by the oppression of inferior 'officers in the execution of process for debt, and the exaction 'of gaolers to whom such debtors are committed: For remedy whereof 'it may be reasonable not only to enforce the execution of the laws 'now in being against such oppressions and exactions, more especially 'several clauses in a statute made at a parliament held in the twenty-'second and twenty-third years of the reign of King *Charles* the Second, 'intituled, "An Act for the relief and release of the poor distressed

32 George II. c. 28.

(1) By the true construction of the above Act, a sheriff is not liable to be called upon, unless *within* six *lunar* months, and the *day* on which he goes *out* of office is to be reckoned part of the six months.—Doug. 416.

* This is usually called the Lords' Act, from having originated in the House of Lords. Similar provisions with respect to the liberation of Insolvent Debtors were contained in statute 2 Geo. II. c. 22, with the exception of the compulsory clauses.

No. XXIX. 32 George II. c. 28.

Officer may not carry his prisoner to any tavern or other public house, without his consent, &c.

'prisoners for debt," but likewise to make some further provisions for 'the ease and relief of debtors who shall be willing to satisfy their creditors to the utmost of their power;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present parliament assembled, and by the authority of the same, That no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or minister whatsoever, shall at any time or times hereafter convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or being in his or their custody by virtue or colour of any action, writ, process or attachment, to any tavern, alehouse, or other public victualling or drinking house, or to the private house of any such officer or minister, or of any tenant or relation of his, without the free and voluntary consent of the person or persons so arrested or in custody; nor charge any such person or persons with any sum of money for any wine, beer, ale, victuals, tobacco, or any other liquor or things whatsoever, save what he, she or they shall call for, of his, her, or their own free accord; nor shall cause or procure him, her, or them to call or pay for any such liquor or things, except what he, she, or they shall particularly and freely ask for; nor shall demand, take or receive, or cause to be demanded, taken or received, directly or indirectly, any other or greater sum or sums of money than is or shall be by law allowed to be taken or demanded for any arrest or taking, or for detaining, or waiting till the person or persons so arrested or in custody shall have given an appearance or bail, as the case shall require, or agreed with the person or persons at whose suit or prosecution he, she, or they shall be taken or arrested, or until he, she, or they shall be sent to the proper gaol belonging to the county, riding, division, city, town or place where such arrest or taking shall be; nor shall exact or take any reward, gratuity, or money for keeping the person or persons so arrested or in custody out of gaol or prison; nor shall carry any such person to any gaol or prison within four and twenty hours from the time of such arrest, unless such person or persons so arrested shall refuse to be carried to some safe and convenient dwelling-house, of his, her, or their own nomination or appointment, within a city, borough, corporation, or market town, in case such person or persons shall be there arrested; or within three miles from the place where such arrest shall be made, if the same shall be made out of any city, borough, corporation, or market town, so as such dwelling-house be not the house of the person arrested, and be within the county, riding, division, or liberty in which the person under arrest was arrested; and then and in any such case it shall be lawful to and for any such sheriff, or other officer or minister, to convey or carry the person or persons so arrested, and refusing to be carried to such safe and convenient dwelling-house as aforesaid, to such gaol or prison as he, she, or they may be sent to, by virtue of the action, writ or process against him, her, or them.

Nor may officer take for the lodging, &c. of such prisoner, more than shall be allowed.

II. And be it further enacted by the authority aforesaid, That no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or person, shall at any time or times hereafter, take or receive any other or greater sum or sums for one or more nights' lodging, or for a day's diet or other expenses of any person or persons under arrest, on any writ, action, attachment or process, other than what shall be allowed as reasonable in such cases by some order or orders already made, or which shall hereafter be made by the justices of the peace at some general or quarter sessions which shall be held for the county, riding, division, city, town or place where such arrest or taking shall be, who are hereby authorized and required, with all convenient expedition, to make some standing order or orders for ascertaining such charges and expenses within their respective counties, ridings, divisions, cities, towns and jurisdictions, if the same hath or have not already been there made; and if any such order or orders hath or have been there already made, such justices for the time being, at their respective general or quarter sessions, are hereby authorized and required to vary or alter the same,

from time to time as they shall see occasion; and also are hereby required to cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace of every such county, riding, division, city, town or place respectively, to be put and kept up in some conspicuous place in the sessions house, or some other proper place of every such respective county, riding, division, city, town or place as such justices shall order, so as the same may be there seen and examined as occasion may require.

Sheriffs, &c. to deliver printed copies of these clauses to bailiffs, &c.

III. And to the intent that no person may suffer by reason of his ignorance of the provisions made by this Act, Be it further enacted by the authority aforesaid, That all and every sheriff, under-sheriff, and bailiff of any liberty, and also the respective secondaries and clerk sitters in the respective compters in *London*, and all other persons entrusted with the execution of process, or who shall enter any actions, or make any warrant or warrants, or any writ or process, in order to have the same executed, shall deliver a printed copy of the several clauses contained in this Act relating to bailiffs, serjeants, and other officers and persons who shall be employed under them respectively to execute any writ, process or attachment, or who shall arrest any person on any action which shall be entered, or otherwise, within their respective sheriffwicks or jurisdictions, to every such bailiff, serjeant, officer and other person, and shall make it part of the condition of every security or bond which shall be given or made to any such sheriff or under-sheriff, or bailiff of any liberty, by any bailiff, serjeant at mace, or other officer or person who shall be employed or entrusted to execute any such writ or process as aforesaid under him, them, or any of them, that every such bailiff, serjeant at mace, or officer, and other person respectively, shall and will shew and deliver a copy of the said clauses to every person he shall arrest by virtue of any process, action, writ or attachment, or under any warrant made out thereon, and carry or go with to any public or other house where any liquor shall be sold; and also shall and will permit every such person who shall be so arrested, or any friend of him or her, to read over the same clauses before any liquor, meat or victuals shall be at any such public or other house called for, or brought to any such person who shall be so under arrest there: and in case any bailiff, serjeant at mace, or other officer or person, shall in any respect offend in the premises, every such offence, besides the breach of the condition of every such security bond, shall be accounted and deemed a misdemeanor in the execution of the process or action on which any such person was arrested, and shall be punishable as such by virtue of this Act.

Sheriffs and gaolers to allow debtors in custody to send for, or have brought to them victuals and beer from what place they shall think fit;

and to have and use such bedding and linen, &c.

IV. And be it further enacted by the authority aforesaid, That every sheriff, under-sheriff, bailiff of any liberty, gaoler and keeper of any prison or gaol, and other person and persons, to whose custody or keeping any one hath been, or hereafter shall be arrested, taken, committed or charged in execution, by virtue of any writ, process or action, or attachment, shall at all times hereafter permit and suffer every such person and persons, during his, her and their respective continuance under arrest or in custody, or in execution for any debt, damages, costs or contempt, at his, her and their free will and pleasure, to send for, or have brought to him, her or them, at seasonable times in the day-time, any beer, ale, victuals, or other necessary food, from what place he, she or they shall think fit, or can have the same; and also to have and use such bedding, linen, and other necessary things as he, she or they shall have occasion for and think fit, or shall be supplied with during his, her, or their continuance under any such arrest or commitment, without purloining or detaining the same, or any part thereof, or enforcing or requiring him, her, or them, to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her, or them, in the using thereof, or relating thereto; and no such prisoner or prisoners shall pay any thing in respect thereof to any such sheriff, under-sheriff, bailiff of any liberty, gaoler, keeper, or other person as aforesaid.

No. XXIX.
32 George II. c. 28.

The Lords Chief Justices of the King's Bench, &c.

to meet and settle a table of the fees, and to vary the same as they shall see occasion.

V. And be it further enacted by the authority aforesaid, That the Lord Chief Justice of the Court of *King's Bench*, the Lord Chief Justice of the Court of *Common Pleas*, and the Lord Chief Baron of the Court of *Exchequer* for the time being, or any two of them, together with the mayor and two of the aldermen, or with three of the aldermen of the city of *London* without the mayor for the time being, for and in respect of the gaols and prisons within the said city of *London*; and the said Lords Chief Justices, and Lord Chief Baron, or any two of them, with three justices of the peace of the counties of *Middlesex* and *Surry* respectively, for and in respect of the gaols and prisons of the said counties of *Middlesex* and *Surry* respectively; are hereby respectively required, with all convenient speed, to meet from time to time at such place as they shall think fit and appoint, and there to settle and establish a table of the rates and fees which shall be allowed to be taken by any gaoler or keeper in *London*, or in the several counties of *Middlesex* and *Surry*, where the same hath not been already established; and where the same hath been already established, they are hereby respectively authorised to meet together as aforesaid, and vary the same from time to time as they shall see occasion; and the justices of the peace of every other county, riding, division, city and place, for and in respect of the gaols and prisons in each other respective county, riding, division, city, town and place, are hereby respectively authorised and required, at any general or quarter session of the peace to be held for such county, riding, division, city, town or place respectively, with all convenient speed, to settle and establish a table of the respective rates and fees which shall be allowed to be taken by any gaoler or keeper within their respective jurisdictions, where the same hath not been already settled and established, and where the same hath been already settled and established, then to vary and alter the same, from time to time, as there shall be occasion: and that the respective tables of such fees, which shall be so made, varied, or altered, for or in respect of the several gaols and prisons within the city of *London*, and counties of *Middlesex* and *Surry* aforesaid, shall be signed from time to time, by the said Lords Chief Justices, and Lord Chief Baron, or two of them, and the mayor and two aldermen of the said city of *London*, or by three aldermen of the said city of *London* without the mayor, and by three justices of the peace of the counties of *Middlesex* and *Surry* respectively, within their respective jurisdictions, by whom the same shall be respectively made, varied, or altered: and that the tables of such fees, which shall be made or altered or varied, for or in respect of the rest of the said gaols and prisons, shall from time to time be signed by three or more of the justices of the peace who shall so make or vary, or alter the same at any such general or quarter session of the peace as aforesaid, and shall be afterwards reviewed and confirmed or moderated, within that part of *Great Britain* called *England*, by the judges of assize, and if within the principality of *Wales*, or county palatine of *Chester*, by the justices of great sessions respectively, at the next assizes or great sessions, which shall be held in the respective counties within their several circuits next after the making, or varying, or altering of any such table of fees; and the same shall be afterwards signed by the respective judges of assize, or justices of great sessions, who shall respectively review, confirm, or moderate the same, and three or more justices of the peace of such respective county, riding, division, city, town, or place, under their respective hands, for and in respect of the respective gaols and prisons within their respective circuits, counties, ridings, divisions, cities, towns, or jurisdictions.

Rules and orders for the better government of the gaols and prisoners therein; to be made by the respective courts in Westminster Hall, &c.

VI. And be it also enacted by the authority aforesaid, That proper rules and orders for the better government of the respective gaols and prisons in that part of *Great Britain* called *England*, and of the prisoners who are or shall be therein, where such rules and orders have not already been made, shall, with all convenient speed, be made by the several courts in *Westminster Hall*, for and in respect of the several gaols or prisons belonging to such courts respectively; and by the said Lords Chief Justices, and Lord Chief Baron, or any two or more of

them, together with the mayor and two aldermen of the said city of *London*, or three or more aldermen of the said city of *London* without the said mayor, for and in respect of the gaols and prisons within the said city of *London*: and by the said Lords Chief Justices, and Lord Chief Baron, or any two of them for the time being, together with three or more justices of the peace, for and in respect of the gaols and prisons within the said counties of *Middlesex* and *Surry*; and by three or more justices of the peace of each county, riding, or division, city, borough, town corporate or place, for and in respect of the gaols and prisons within their respective counties, ridings, divisions, cities, boroughs, towns corporate or places, at some general or quarter sessions as aforesaid; and the same shall afterwards be reviewed, and may be altered, if thought necessary, by the judge or judges of assize, or justice or justices of great sessions respectively, at the next assizes or great sessions which shall be held by them respectively, within their several circuits, after the making or altering of any such rules or orders; and where any rules or orders for regulating or governing any such gaols or prisons have already been made, or hereafter shall be made, the same may, at all times hereafter, be enlarged, altered or amended, as there shall be occasion, by the respective courts in *Westminster Hall*, and other the persons for the time being respectively authorized by this Act to make and alter the same: And after every making, enlarging, altering or amending thereof, all such rules or orders so enlarged, altered or amended, shall be signed by the judges of each respective court in *Westminster Hall*, where any such rules or orders shall be made, enlarged, altered or amended, for and in respect of the prisons and prisoners belonging to the said courts respectively; and in respect to the other gaols or prisons, or the prisoners therein, by the respective persons for the time being, hereby before authorized to make, and review or alter such rules or orders within their respective jurisdictions as aforesaid: And duplicates of every such table of fees which shall be made, enlarged, altered or varied, and of all rules or orders which shall be hereafter made for regulating any gaol or prison in pursuance of this Act, belonging to the said respective courts in *Westminster Hall*, shall be entered and inrolled on record in every such respective court, by the proper officer thereof, without any fee to be paid for the same; and a like duplicate of every such table of fees, rules or orders, which shall be so made, varied, altered or amended, and which shall concern or relate to any other gaol or prison, or the prisoners therein, in that part of *Great Britain* called *England*, shall, from time to time, with all convenient speed after the making or altering, enlarging or varying thereof, be transmitted to the respective clerks of the peace of the several counties, ridings, divisions, cities or places, in or for which the same shall be made, altered, enlarged or varied, and shall be by every such respective clerk of the peace, entered or registered on the rolls of the respective sessions without fee: and every such clerk of the peace shall cause another copy thereof to be hung up in the court where every assize, great sessions or quarter sessions of the peace for every such county, riding, division, city or place respectively, within his jurisdiction, shall be held, there to remain and be inspected as occasion shall require; and shall also cause another copy thereof to be transmitted to every gaoler or keeper of any prison, within the jurisdiction of any such respective clerk of the peace; and every such gaoler or keeper shall forthwith, after the receipt of any such table of fees, rules or orders, cause the same to be hung up in some open or public room or place, and in a conspicuous manner, in his gaol or prison; and it shall be incumbent on every such gaoler or keeper, to take care that the same shall, from time to time, be kept up there and preserved, so as that the prisoners in his gaol or prison may have free and easy resort thereto, at seasonable times in the day-time, as occasion shall require, without paying any thing for the same.

Duplicates of such orders and tables of fees, to be inrolled and entered upon record in the proper courts, &c.

VII. And be it further enacted by the authority aforesaid, That the several Courts of Record in *Westminster Hall* aforesaid shall hereafter,

Courts in Westminster Hall to inquire annual-

No XXIX. 32 George II. c. 28.

lywhether such tables of fees and orders are duly hung up and complied with, &c.

in every *Michaelmas* Term, appoint some day in such term, to inquire whether such table of fees, and such rules or orders as aforesaid, are hung up, and remain public, and easy to be resorted to, in the several prisons to the said courts respectively belonging, and whether the same be duly complied with and observed; and shall cause eight days' notice to be given in every such *Michaelmas* Term, to the prisoners in every of the respective prisons belonging to the said respective courts in *Westminster Hall*, of the time appointed for such inquiry, and shall inform themselves touching the same in the best manner they can, and supply and redress whatever they shall find neglected or transgressed.

Judges and justices of assize, &c. to make a like inquiry.

VIII. And be it also enacted by the authority aforesaid, That the judges and justices of assize, gaol delivery, and great sessions as aforesaid, respectively, within their respective jurisdictions, shall, at all assizes and sessions of gaol delivery and great sessions as aforesaid, which shall hereafter be held by them, make inquiry whether such table of fees, and rules or orders as aforesaid, are hung up, and remain public, to be resorted to in the several gaols or prisons within their respective jurisdictions, and whether the same be duly complied with and observed; and shall inform themselves touching the same in the best manner they can, and supply and redress whatever they shall find neglected or transgressed relating thereto, and shall expressly give in charge to every grand jury impanelled and sworn before them respectively, to make inquiries concerning the same.

Courts at Westminster, &c. to enquire concerning bequests to poor prisoners, &c.

IX. And be it further enacted by the authority aforesaid, That the several Courts of *King's Bench*, *Common Pleas*, and *Exchequer*, judges of assise, and justices of great sessions, and justices of the peace within their respective jurisdictions, and all commissioners for charitable uses, do, from time to time, use their best endeavours and diligence, to examine after and discover the several gifts, legacies and bequests, bestowed or given for the benefit or advantage of the poor prisoners in the several gaols or prisons within their respective jurisdictions; and they are hereby severally authorized, within their respective jurisdictions, to send for, and cause to be brought before them respectively, any deeds, wills, writings, books of accounts and papers, as they shall receive information of to be in the custody of any person within their respective jurisdictions, and to concern the premises; and also may summon, and cause to come before them respectively, any person or persons who they shall have any just reason to apprehend may be able to make any discovery concerning the same; and they are hereby authorized, within their respective jurisdictions, to examine any such person or persons on oath, in order to get at a true discovery thereof, and to order and settle the payment, recovery and receipt of any such gifts, legacies or bequests, when so discovered and ascertained, in such easy and expeditious manner and way, as shall be thought proper by them respectively, that the prisoners for the future may not be defrauded, but may, without delay, receive the full benefit of all such gifts, legacies and bequests, according to the true intent of the respective donors thereof.

Table of benefactions to be transmitted to, and registered by the clerks of the peace, &c.

X. And be it further enacted by the authority aforesaid, That a list or table of such gifts, legacies and bequests, for the benefit of the prisoners in every gaol or prison respectively as aforesaid, shall, after every settling thereof, be transmitted by the persons hereby authorized to settle the same, unto the clerks of the peace of the respective counties or places, and shall be registered by them respectively, in the manner tables of fees and orders are hereinbefore directed to be registered by them respectively, without any fee to be paid for the same; and that a list or table of such gifts, legacies and bequests, shall be fairly written and transmitted, by order of such persons as aforesaid, to the gaoler or keeper of every gaol or prison to which the gifts, charities or bequests therein contained relate, and forthwith after the receipt thereof shall be hung up by the gaoler or keeper, who shall receive the same, in a conspicuous manner in some public place in his gaol or prison, and where the prisoners in such gaol or prison may have free and easy resort thereto, as occasion may require, without fee; and it shall be the duty of every

such gaoler or keeper, to take care that every such list or table of gifts which shall be transmitted to any such gaol or prison, or a true copy thereof, shall, from time to time thereafter, be kept hung up as aforesaid in his respective gaol or prison.

XI. And for the more speedy punishing gaolers, bailiffs, and others employed in the execution of process, for extortion, or other abuses in their respective offices and places, Be it further enacted by the authority aforesaid, That upon the petition, in term time, of any prisoner or person being, or having been, under arrest or in custody, complaining of any exaction or extortion by any gaoler, bailiff or other officer or person, in or employed in the keeping or taking care of any gaol or prison or other place, where any such prisoner or person under, or having been under, arrest or in custody, by any process or action, is or shall have been carried, or in respect of the arresting or apprehending any person or persons, by virtue of any process, action or warrant, or of any other abuse whatsoever committed or done in their respective offices or places, unto any of his Majesty's Courts of Record at *Westminster*, from whence the process issued, (1) by which any person who shall so petition was arrested, or under whose power or jurisdiction any such gaol, prison or place is; or in vacation time to any judge of any such courts at *Westminster*, from whence any such process so issued; or to the judges of assize, or justices of great sessions, in their respective circuits; or to the judge or judges of any other court of record, where any prisoner or person being, or having been, under arrest or in custody, was arrested or in custody by process issued out of, or action entered in, any such other court of record within that part of *Great Britain* called *England*; and if within the principality of *Wales*, or county palatine of *Chester*, then to the justices at some great sessions to be holden for the county in the principality of *Wales*, or for the county palatine of *Chester*, where any such prisoner or person being, or having been under arrest or in custody, was arrested or in custody, in the said principality of *Wales*, or county palatine of *Chester*; every such court, judges of assize, and justices of great sessions, and judge and judges of all inferior courts of record, are hereby authorized and required respectively, within their several jurisdictions, to hear and determine the same in a summary way, and to make such order thereupon for redressing the abuses which shall, by any such petition, be complained of, and for punishing such officer or person complained against, and for making reparation to the party or parties injured, as they shall think just, together with the full costs of every such complaint; and all orders and determinations which shall be thereupon made by any of the said courts, or any of the said judges, justices of assize, justices of great sessions, judge or judges of any such inferior court as aforesaid respectively, in such summary way as is herein prescribed, shall have the same effect, force and virtue, and obedience thereunto may be inforced by the respective courts, judges, justices of assize, justices of great sessions, judge or judges of any such inferior court, by attachment, or in any other manner, as other orders of the said respective courts, judges, justices of assize and great sessions, judge or judges of inferior courts of record, may be inforced.

Where gaolers, &c. shall be guilty of extortion, the court, &c. upon petition of the prisoners, is to examine into the same in a summary way, &c.

XII. And be it further enacted by the authority aforesaid, That no gaoler or keeper of any gaol or prison or other person thereto belonging, shall demand, take or receive, directly or indirectly, of any prisoner or prisoners, for debt, damages, costs or contempt, any other or greater fee or fees whatsoever for his, her, or their commitment, or coming into gaol, chamber rent there, release or discharge, than what shall be mentioned or allowed in the list or table of fees which is or shall be settled, inrolled and registered as aforesaid; and that every sheriff, under-sheriff, bailiff of any liberty, bailiff, serjeant at mace, gaoler and other officer and person as aforesaid, who shall in any wise offend against

Gaoler to take no other fees than what shall be allowed in the authenticated table of fees.

(1) If by abuse of the process of one court a promissory notice is obtained, upon which an action is brought in another court, the latter court cannot interfere in a summary way under this clause; Ex parte Evans, 2 B. and P. 88.

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this Act, shall, for every such offence against this present Act (over and above such penalties or punishments as he or they shall be liable unto by the laws now in force) forfeit and pay to the party thereby aggrieved the sum of fifty pounds, to be recovered with treble costs of suit, by action of debt, bill, plaint, or information, in any of his Majesty's Courts of Record at *Westminster*; wherein no essoign, protection or wager of law, or more than one imparlance, shall be allowed.

Debtor charged in execution for any sum or sums not exceeding 100*l.* &c.

* XIII. And for the ease and relief of prisoners who shall be charged in execution for any sum or sums of money not exceeding in the whole the sum of one hundred pounds, and who shall be willing to satisfy their respective creditors so far as they are able; Be it further enacted by the authority aforesaid, That from and after the fifteenth day of *June*, One thousand seven hundred and fifty-nine, if any person or persons shall be charged in execution for any sum or sums of money not exceeding in the whole the sum of one hundred pounds, or on which execution or executions (1) there shall at any time remain due, as shall be made appear by oath, a sum or sums of money not amounting to above the said sum of one hundred pounds, and shall be minded to deliver up to his, her, or their creditor or creditors who shall so charge him, her, or them in execution, all his, her, or their estate and effects, for or towards the satisfaction of the debt or debts wherewith he, she or they shall so stand charged; it shall and may be lawful to and for any such prisoner, before the end of the first term which shall be next after any such prisoner shall be charged (2) in execution by his creditor or creditors, to exhibit a petition to any court of law, from whence the process issued upon which any such prisoner or prisoners was or were taken and charged in execution as aforesaid, or to the court into which any such prisoner shall be removed by *Habeas Corpus*, or shall be charged in custody, and shall remain in the prison thereof, certifying the cause or causes of his, her, or their imprisonment, and not only setting forth in every such petition a just and true account of all the real and personal estate, which he, she, or they so petitioning, or any person or persons in trust for him, her, or them, is, was, or were entitled to at the time of his, her, or their so petitioning, and of all incumbrances and charges (if any there be) affecting any such real or personal estate of the person or persons so petitioning, but also a just and true account of all the real and personal estate which any such prisoner or prisoners, or any person or persons in trust for him, her, or them, or for his, her, or their use, was or were interested in, or entitled to, at the time of his, her, or their first imprisonment, in the action in which such person is charged in execution, either in possession, reversion, remainder, or expectancy, to the best of the belief of every such prisoner or prisoners, and so far as his, her, or their respective knowledge extends concerning the same; and likewise a just and true account of all securities wherein any part of the estates of any such prisoner or prisoners consists, and of all the deeds, evidences, writings, books, bonds, notes and papers, concerning the

may exhibit a petition to the court,

with a schedule of his estate, &c.

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* This clause *favourably* construed, so as to serve the *intention* of the Act, in 2 Burr. 799. 901. and 4 Burr. 2526; yet defendants in *qui tam* actions are not within it; 3 Burr. 1322. This clause also leaves the time of bringing *remanded* prisoners up again to the discretion of the court; whereas 2 Geo. 2. c. 22. s. 9. *fixed it* to some time within the first week of the following term; 3 Burr. 1393.—(Note in Runnington's Edition of the Statutes).

(1) A prisoner in custody under an attachment for not paying money is within the Act, as being merely a civil remedy; Rex *v.* Stokes, Cowp. 136. It does not seem to have been adverted to, that the creditor has not the benefit of the remedies given in respect to future effects.

(2) If a defendant be arrested on a *ca. sa.* and afterwards escape, and be committed to prison in the next term, he may apply the following term to be discharged; for the words *charged in execution* mean being detained within the walls of the prison; Vaughan *v.* Durnell, 4 T. R. 367. An application, within the second term after the prisoner is charged in execution, is sufficient within the Lords' Act, 32 Geo. II. c. 28. stat. 13. Nichols *v.* Neilson, 2 Marsh, 200. As if a defendant taken in execution in Trinity vacation, under a writ of *capias ad satisfaciendum*, returnable in Michaelmas term, applies for his discharge under 32 Geo. II. c. 28., in Hilary term following, he is in due time. Nichols *v.* Neilson, 6 Taunt. 498.

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same or relating thereto; and the names and places of abode of the witnesses to all securities, bonds, or notes, and where they are to be respectively met with, so far as his, her, or their knowledge extends concerning the same: And before any such petition from any such prisoner or prisoners shall be received by any such court, every such prisoner or prisoners shall give or leave, or cause to be given or left, unto and for all and every the creditor or creditors at whose suit any such prisoner or prisoners shall stand charged in execution as aforesaid, or his, her, or their executors or administrators, and at his, her, or their usual place of abode, or to or for his, her or their attorney or agent, last employed in any such action, suit, cause or causes, in case any such creditor or creditors, his, her, or their executors or administrators, cannot be met with, but not otherwise, fourteen days at least before any such petition shall be presented and received, a notice in writing, signed with the proper name or mark of every such prisoner or prisoners, importing therein, that such prisoner or prisoners as aforesaid, doth or do intend to petition the court from whence the process issued, upon which he, she, or they stand charged in execution, or into the prison to which any such prisoner shall have been removed by *Habeas Corpus*, or shall stand charged in execution on any judgment, recovered on any bill or declaration filed or delivered in any such court; and also setting forth in every such notice or writing, a true copy of the account or schedule, including the whole real and personal estate of the person or persons so designing to petition, which he, she, or they doth or do intend to deliver into any such court (other than and except the necessary wearing apparel and bedding of the prisoner or prisoners, and his, her, or their family, and the tools or instruments of his, her, or their trade or calling, not exceeding ten pounds in value in the whole); and an affidavit of the due service of every such notice shall be delivered with every such petition, at the time of presenting thereof, and openly read in the court to which any such petition shall be addressed: and if such court shall thereupon be satisfied of the regularity of every such notice, such petition shall be received, and such court shall thereupon, by order or rule of the same court, cause the prisoner or prisoners so petitioning to be brought up to such court, on some certain day in such order or rule to be specified, and the creditor, or several creditors, at whose suit any such prisoner or prisoners shall stand charged in execution as aforesaid, his, her, or their executors or administrators, to be summoned to appear personally, or by his, her, or their attorney in such court, at some certain day to be specified in such rule or order for that purpose: and if any creditor or creditors of any such prisoner or prisoners, who shall be so summoned, his or her executors or administrators, shall appear in person, or by his, her, or their attorney; or if any such creditor or creditors, his or her executors or administrators, shall refuse or neglect to appear in person, or by his, her, or their attorney, then upon affidavit of the due service of such rule or order on him, her, or them, or his, her, or their attorney, if any such creditor or creditors, his, her, or their executors or administrators, cannot be met with, such court shall in a summary way examine into the matter of every such petition, and hear what can or shall be alleged on either side for or against the discharge of any such prisoner or prisoners who shall so petition; and upon such examination every such court is hereby required to administer or tender to the prisoner or prisoners respectively who shall so petition, and give such previous notice thereof as hereinbefore is directed, an oath to the effect following. That is to say,

14 days' previous notice of such intended petition to be given to the creditor or his attorney, at whose suit he is charged in execution;

with a copy of the schedule he intends to deliver into court.

Affidavit of the due service of such notice to be delivered at the same time with the petition into court, and read openly; and a rule to be made upon receiving the petition, &c.

the court to examine into the matter of the petition in a summary way, and administer the oath following to the prisoner.

The oath.

'I *A. B.* do swear in the presence of Almighty God, That the account 'by me set forth in my petition presented to this honourable court, 'doth contain a full and true account of the real and personal estate, 'debts, credits and effects whatsoever, which I, or any in trust for me at 'the time of my first imprisonment in this action, or at any time since 'had, or was in any respect intitled to, in possession, reversion or 'remainder (except the wearing apparel and bedding of or for me and

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'my family, and the tools or instruments of my trade or calling, not 'exceeding ten pounds in value in the whole) and also an account how 'much of my real and personal estate, debts, credits or effects, hath 'since been disposed of, released or discharged, and how, to whom, and 'on what consideration, and for what purpose, and how much thereof I 'or any person or persons in trust for me have, or at the time of my 'presenting my said petition to this honourable court had, or which I 'am or was, or any person in trust for me, or for my use, is any ways 'interested in or intitled to, in possession, reversion, remainder, or ex-'pectancy, and also a true account of all deeds, writings, books, papers, 'securities, bonds, and notes relating thereto, and where the same 'respectively now are, to the best of my knowledge and belief, and what 'charges are now affecting the real estate I am now seised of or intitled 'to *(if any such prisoner or prisoners shall be then seised of any real 'estate)* and that I have not, at any time before or since my imprison-'ment, directly or indirectly sold, leased, assigned, mortgaged, pawned, 'or otherwise disposed of or made over in trust for myself, or otherwise 'than is mentioned in such account, any part of my messuages, lands, 'tenements, estates, goods, stock, money, debts, or other real or per-'sonal estate, whereby to have or accept any benefit, advantage, or 'profit, to myself or my family, or with any view, design, or intent to 'deceive, injure, or defraud any of my creditors to whom I am indebted.

'So help me GOD.'

Court may thereupon order an assignment to be made, on the back of the petition, of the prisoner's estate and effects and conveyed to the creditor, &c.

And in case any prisoner or prisoners as aforesaid shall in open court take the said oath, such court in which any such oath as aforesaid shall be taken may then immediately order the messuages, lands, tenements, goods and effects contained in such account, or so much of them as may be sufficient to satisfy the debt or debts wherewith any such prisoner or prisoners shall stand charged in execution, and the fees due to the warden, marshal, or keeper of the gaol or prison from which any such prisoner was brought, to be, by a short indorsement on the back of such petition, and to be signed by the prisoner, assigned and conveyed to the creditor or creditors who shall have charged any such prisoner in execution (if more than one) his, her, or their heirs, executors, administrators and assigns, for the benefit of him, her, or them, who shall have so charged any such prisoner in execution (subject nevertheless to all prior incumbrances affecting the same); and the estate, interest, or property of all messuages, lands, goods, debts, estates and effects which shall belong to any such prisoner, shall by such assignment and conveyance as aforesaid be vested in the person or persons to whom such assignment and conveyance shall be made, according to the estate and interest such prisoner or prisoners had therein respectively; and the creditor or creditors to whom any such assignment and conveyance shall be made, shall and may take possession of, and sue in his, her, or their name or names for the recovery thereof, in like manner as assignees of commissioners of bankrupts can or may sue for the recovery of the estate and effects of bankrupts which shall be assigned and conveyed to them; and no release of any such prisoner or prisoners, his or her executors or administrators, or any trustee for him, her, or them, subsequent to such assignment and conveyance, shall be pleadable, or be allowed of in bar of any action or suit which shall be commenced by any such assignee or assignees of any such prisoner or prisoners, for the recovery of any of his, her, or their estate or effects; and upon every such assignment and conveyance being executed by any such prisoner or prisoners, he, she, or they shall be discharged out of custody by rule or order of such court, which shall be petitioned by any such prisoner; and such rule or order being produced to, and a copy thereof being left with, any such sheriff, gaoler or keeper of any prison as aforesaid, shall be a sufficient warrant to him to discharge every such prisoner or prisoners, if charged in execution, or detained for the causes mentioned in his, her, or their respective petition, and no other: And every such sheriff, gaoler or keeper is hereby required, on having such order produced to him, and a

Court thereupon to make a rule for discharge of the prisoner, &c.

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copy thereof left with him, to discharge and set at liberty forthwith every such prisoner and prisoners who shall be ordered as aforesaid to be so discharged, without taking any fee, or detaining him, her, or them in respect of any demand of any such sheriff, warden, marshal, gaoler or keeper, for or in respect of chamber rent or lodging, or otherwise; or for or in respect of any fees theretofore claimed or due to any such sheriff, gaoler or keeper, or any employed by or under him or them: And no such sheriff, gaoler or keeper shall afterwards be liable to any action of escape, or other suit or information on that account, or for what he shall do in pursuance of this Act; and the person or persons to whom the estate and effects of any such prisoner or prisoners shall be assigned and conveyed, shall with all convenient speed sell and dispose of the estate and effects of every such prisoner which shall be so assigned and conveyed, and shall divide the net produce of all such estates and effects amongst the creditors of every such prisoner or prisoners, if more than one, who shall have charged any such prisoner in execution, before the time of such prisoner's petition to be discharged shall have been presented, rateably and in proportion to their respective debts; but in case the person or persons at whose suit any such prisoner or prisoners stood charged in execution as aforesaid, shall not be satisfied with the truth of any such prisoner's oath, and shall either personally, or by his, her or their attorney, if he, she, or they cannot personally attend, and proof shall be made thereof to the satisfaction of any such court as aforesaid, desire further time to inform him, her, or themselves of the matters contained therein, any such court may remand any such prisoner or prisoners, and direct him, her or them, and the person or persons dissatisfied as aforesaid with such oath, to appear either in person, or by his, her, or their attorney, on some other day to be appointed by such said court, some time at furthest within the first week of the term next following the time of such examination, but sooner if any such court shall so think fit; and all objections which shall be made as to the insufficiency in point of form against any prisoner's schedule of his estates and effects, shall be only made the first time any such prisoner shall be brought up; and if at such second day which shall be appointed, the creditor or creditors dissatisfied with such oath shall make default in appearing, either in person, or by his, her, or their attorney, or in case he, she, or they shall appear, if he, she, or they shall be unable to discover any estate or effects of the prisoner omitted in the account set forth in such his or her petition, then and in any such case such court shall, by rule or order thereof, immediately cause the said prisoner or prisoners to be discharged, upon such prisoner or prisoners executing such assignment and conveyance of his or her estates and effects, in manner as assignments and conveyances of prisoners' estates and effects are hereinbefore directed to be made, unless such creditor or creditors who shall have charged any such prisoner or prisoners in execution as aforesaid, his, her, or their executors or administrators, doth or do insist upon such prisoner or prisoners being detained in prison, and shall agree by writing signed with his, her, or their name or names, mark or marks, or under the hand of his, her, or their attorney, in case any such creditor or creditors, his, her, or their executors or administrators, shall be out of *England*, to pay and allow weekly a sum not exceeding two shillings and fourpence, (1) as any such court shall think fit, unto the said prisoner, to be paid every *Monday* in every week, so long as any such prisoner shall continue in prison in execution at the suit of any such creditor or creditors; and in every such case every such prisoner and prisoners shall be remanded back to the prison or gaol from whence he, she, or they was or were so brought up, there to continue in execution; but if any failure shall at any time be made in the payment of the weekly sum (2) which shall be ordered by any such

Creditor not appearing the second day, or not making a further discovery;

Court to make a rule for discharge of the prisoner; unless the creditor insist upon his detention, and covenant to allow him 2*s.* 4*d.* per week.

(1) Raised to 3*s.* 6*d.* by stat. 37 Geo. III. c. 85. *infra.*

(2) If any of the payment is in false or spurious coin, the prisoner is entitled to his discharge, and is not bound by the acceptance of the turnkey, 7 Taunt. 7.

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But upon failure at any time in the payment thereof, the prisoner upon application to the court to be discharged.

court to be paid to any such prisoner, such prisoner, upon application in term time to the court where the suit in which any such prisoner shall be charged in execution was commenced, or shall have been carried on, or in the prison of which court any such prisoner shall stand committed on any *Habeas Corpus*, or in vacation time, (1) to any judge of any such court, may by the order of any such court or judge be discharged out of custody on every such execution; proof being made before such court, or judge, on oath of the non-payment for any week of the sum of money ordered and agreed to be weekly paid; but every such prisoner and prisoners, before he, she, or they shall be so discharged out of custody by any such rule or order, shall execute an assignment and conveyance of his, her, or their estates and effects, in manner hereinbefore directed: And if any prisoner who shall petition or apply for his or her discharge under this Act, shall refuse to take the said oath hereinbefore directed to be taken, or taking the same shall afterwards be detected before any such court or judge of falsity therein, or shall refuse to execute such assignment and conveyance of his, her, or their estates and effects as aforesaid, as hereinbefore is required to be made by him, her, or them respectively, he, she, or they shall be presently remanded and continue in execution.

Where more creditors than one insist on the prisoner's detention, they are to pay him each not exceeding 1*s.* 6*d.* per week.

XIV. Provided always, and be it further enacted, That where more creditors than one shall charge any prisoner or prisoners in execution, and shall desire to have such prisoner or prisoners detained in prison, each and every such creditor and creditors shall only respectively pay such weekly sum of money, not exceeding one shilling and sixpence a week, on every *Monday* in every week, to or for such respective prisoner, as the court before whom any such prisoner or prisoners shall be brought up to be discharged shall at the time of his, her, or their being remanded, on such note for the payment of the weekly sum ordered to be paid being given, direct or appoint.

Prisoner charged in execution in county and other gaols, distant from Westminster, to proceed in like manner by petition and affidavit;

XV. And be it further enacted by the authority aforesaid, That from and after the said fifteenth day of *June*, One thousand seven hundred and fifty-nine, where any prisoner or prisoners shall be charged in execution in any county gaol, or in any other gaol or prison, above the space of twenty miles distant from *Westminster-Hall*, or the court or courts out of which the execution or executions shall be issued out against any such prisoner or prisoners, then upon petition being made by any such prisoner or prisoners to the Court from whence any such execution or executions against any such prisoner or prisoners issued, or in the prison of which court any such prisoner shall be and stand charged in execution, in the like form and manner as the petitions hereinbefore mentioned of prisoners are directed to be made, and on an affidavit to the purport as affidavits are hereinbefore directed to be made in the case of prisoners in gaol not above twenty miles distant from the court out of which the execution against such prisoner issued, being made and left with such petition, such court (on being satisfied with the truth of such affidavit) is hereby authorized and required to make a rule or order to cause the prisoner or prisoners so petitioning, to be brought to the next assizes which shall be holden for the county or place where he, she, or they shall be imprisoned, if the same shall be within that part of *Great Britain* called *England*; and if within the principality of *Wales*, or county palatine of *Chester*, then to cause such prisoner or prisoners to be brought to the next great sessions to be holden for the county in *Wales*, or county palatine of *Chester*, in which any such prisoner or prisoners shall be imprisoned; and the expense of bringing every such prisoner to any such assizes, not exceeding one shilling a mile, shall be paid to the gaoler, keeper, or officer who shall bring any such prisoner to any expenses out of the prisoner's estate;

and the court to make a rule thereupon for his being brought up to the next assizes, &c.

1*s.* per mile to be paid to the gaoler for his

(1) An order cannot be made by a judge in term, though summonses were taken out in vacation, and the order only delayed until the beginning of term by an irregularity in the affidavits; Huskins *v.* Morris, 1 B. and P. 92.

such assizes or great sessions, in obedience to any such rule or order as aforesaid served on him, out of every such prisoner's estate or effects, if the same shall be sufficient to pay such expense; and if not, then such expense shall be paid by the treasurer of the county, riding, division or place in which any such prisoner shall be imprisoned, out of the stock of the county, riding, division or place, as the same shall be allowed, directed or ordered, by any such court from which any such execution shall have been issued against any such prisoner or prisoners, or in the prison of which any such prisoner shall be, by one or more of the judge or judges of assize, justice or justices of great sessions: And the creditor or several creditors, his, her, or their executors or administrators, at whose suit any such prisoner or prisoners shall stand charged in execution as aforesaid, shall by rule or order of the court from whence the process issued, be summoned to appear at the said next assizes or great sessions, if such creditor or creditors, his, her, or their executors or administrators, can be met with; and if not, then the attorney last employed for such creditor or creditors shall be summoned to appear there; and a copy of every such rule or order shall be served on every of such creditor or creditors, his, her, or their executors or administrators, or be left at his, her, or their dwelling-house or usual place of abode, or with his, her, or their attorney last employed as aforesaid, fourteen days at least before the holding of any such assizes or great sessions; and on an affidavit of such service thereof being laid before the judge or judges of assize, justice or justices of great sessions as aforesaid, such judge or judges of assize, justice or justices of great sessions respectively, on being satisfied with the truth of such affidavit, is and are hereby required to appoint a time for hearing the matter upon every such petition as aforesaid, on some certain day and time, on the crown side of every such court or great sessions, during such assizes or great sessions; and upon the appearance there of the creditor or creditors who shall be summoned in pursuance of this Act, his, her, or their executor, or administrators, or in default of the appearance, either in person or by attorney, of the party or parties who shall have been summoned so to appear, then on proof of his, her, or their being duly served with the notice hereby required to be given, and a copy of the account of the real and personal estate of the prisoner or prisoners desiring to be discharged being comprised in such notice, and also of the rule of such court for his, her, or their appearance at such assizes or great sessions having been duly served as hereinbefore is directed, the judge or judges of such assizes or great sessions respectively, as the case shall happen to be, shall there in a summary way examine into the matter of every such petition, and hear what can or shall be alleged on either side, for or against the discharge of the prisoner or prisoners so petitioning; and upon every such examination such judge and judges of assize and great sessions respectively, or any one of them, is and are hereby empowered and required respectively, within their respective jurisdictions, to administer or tender to every such prisoner the same oath as hereinbefore is directed and appointed to be taken, by any prisoner, before the judges of the court out of which the process, upon which any such prisoner was taken in execution, issued; and such said judge or judges of assize, justice or justices of great sessions respectively, or any one of them, is and are hereby respectively authorized and required to make such order in the premises, as to him or them shall seem meet, and to proceed in the same manner concerning the discharge of any prisoner or prisoners in any prison within their respective jurisdictions, and to give the same judgment, relief and directions relating thereto, as any court out of which any process shall issue against any such prisoner as aforesaid, is hereinbefore empowered and directed to do: And every order which shall be made in the premises by any such judge or judges of assize or great sessions, shall be as valid and effectual as if the same had been made in the court out of which the process issued on which any such prisoner was charged in execution; and the same shall be made a record of the proceedings at

or by the treasurer of the county.

Creditors to be summoned,

and a copy of the rule served on them;

and upon affidavit made of such service, the court to appoint a time for hearing the matter of the petition;

and the creditors appearing thereto, or not, proof being made of their being duly served with the notice, and copy of the schedule of the prisoner's estate, the court to proceed therein in a summary way;

and administer the oath to the prisoner;

and make such order in the premises as shall seem meet, and proceed as aforesaid concerning the prisoner's discharge.

Order to stand good, and be entered upon record.

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such assizes or great sessions, as the case shall happen to be, and a copy thereof shall from thence be transmitted to the court from whence the execution against the prisoner or prisoners discharged issued, or was awarded, signed by the judge or judges of assize or great sessions, to be a record of the said court, and to be kept as such amongst the other records thereof.

Prisoner refusing to deliver up his estate and effects to satisfy his creditors,

'XVI. And whereas it sometimes happens that persons who are 'prisoners in execution in gaol for debt or damages, will rather spend 'their substance in prison, than discover and deliver up the same 'towards satisfying their creditors their just debts, or so much thereof 'as such substance will extend to pay;' Be it therefore further enacted, That if any prisoner now committed to any prison or gaol, and charged in execution for any debt or damages not exceeding the sum of one hundred pounds, besides costs of suit, shall not, on or before the twenty-ninth day of *September*, One thousand seven hundred and fifty-nine, make satisfaction to the creditor or creditors, his, her, or their executors or administrators, at whose suit any such prisoner shall be so charged in execution for such debt or damages, and the costs of such suit, or if any prisoner, who after the said fifteenth day of *June*, One thousand seven hundred and fifty-nine, shall be committed or charged in execution in any prison or gaol, for any debt or damages not exceeding the sum of one hundred pounds besides costs of suit, shall not within three months next after every such prisoner after the said fifteenth day of *June*, One thousand seven hundred and fifty-nine, shall be committed or charged in execution as aforesaid, make satisfaction to his, her, or their creditor or creditors, who shall charge any such prisoner in execution as aforesaid, his, her, or their executors or administrators for such debt, damages and costs; then, and in any of the said cases, any such creditor or creditors, his, her, or their executors or administrators, is and are hereby authorized and empowered to require every such respective prisoner or prisoners, on giving twenty days' notice in writing to him or her respectively, that such creditor or creditors, his, her, or their executors or administrators, design to compel any such prisoner to give into the court at law, from which the writ or process issued on which any such prisoner is or shall be charged in execution as aforesaid, or into the court in the prison of which any such prisoner hath been or shall be removed by *Habeas Corpus*, or shall remain or be charged in execution, within the first seven days of the term which shall next ensue the expiration of the said twenty days, in respect to any prisoner charged in any of the prisons belonging to any of the courts in *Westminster Hall*; and at the second court which shall be held by any such other Court of Record after the expiration of the said twenty days, in respect to any prisoner charged in any prison belonging to any such other court; and where any such prisoner is or shall be charged in execution, in any county gaol, or other gaol or prison, above the space of twenty miles distant from *Westminster Hall*, or the court or courts out of which the writ or process on which any such prisoner is or shall be so charged in execution issued, or shall issue; then to give in upon oath, at the assizes or great sessions as aforesaid, and on the crown side thereof, which shall be held for the county or place in the prison of which any such prisoner shall be, next after the expiration of such twenty days from the time of giving any such notice as aforesaid to any such prisoner, a true account in writing, and to be signed with the proper name or mark of every such prisoner, of all the real and personal estate of such prisoner, and of all incumbrances affecting the same, to the best of the knowledge and belief of such prisoner, in order that the estate and effects of such prisoner may be divested out of him or her, and may by the court, judge or judges, justice or justices as aforesaid, be ordered to be assigned and conveyed, in manner and for the purposes hereinafter declared: And every such creditor or creditors as aforesaid, who shall require any such prisoner to be brought up as aforesaid, for the purpose aforesaid, shall also give twenty days' like notice in writing, of such his, her, or their intention, to require any such prisoner to be brought up as aforesaid, to discover

creditors may compel such prisoner to be brought up and deliver into court a schedule of his estate and effects, and the incumbrances affecting the same, upon oath; giving the prisoner twenty days' notice of such intention, &c.

and deliver up his or her estate as aforesaid, to all and every other creditor and creditors of every such prisoner, at whose suit any such prisoner shall be detained or charged in custody in any such gaol or prison, if such prisoner shall be there detained in custody, or charged in execution at the suit of any other creditor or creditors, besides the creditor or creditors giving such notice as aforesaid, if such other creditor or creditors can be found out or met with, and if not, then to the several attornies last employed in the respective actions or suits, in which any such prisoner or prisoners shall be so detained or charged in custody by any such other creditor or creditors of such prisoner; and shall likewise give a like notice in writing to the sheriff or sheriffs, gaoler or keeper of the gaol or prison in which any such prisoner or prisoners shall be detained in custody, or committed or charged in execution as aforesaid, of such his or her intention to have any such prisoner so brought up, and to require such sheriff or sheriffs, gaoler or gaolers respectively, to bring up every such prisoner accordingly: (1) And every such notice which shall be so given to any such sheriff or sheriffs, gaoler or gaolers, shall be so given to him or them respectively, twenty days at least before the time appointed for any such prisoner to be so brought up: and thereupon every such sheriff or sheriffs, gaoler or keeper respectively, to whom any such notice as aforesaid shall be so given, shall at the costs of such creditor or creditors, his, her, or their executors or administrators, cause every such prisoner to be brought, as by such notice in writing shall be required, to such court, assizes or great sessions as aforesaid, together with a copy or causes of his or their respective detainer or detainers there; and if any such sheriff or sheriffs, gaoler or keeper on any such notice in writing being given to him or them as aforesaid, and tender being made to him or them, by or on the behalf of any such creditor or creditors aforesaid, of reasonable charges, not exceeding one shilling a mile, to bring up the prisoner or prisoners required as aforesaid to be so brought up to any such court, assizes or great sessions as aforesaid, shall neglect or refuse to bring there the prisoner or prisoners so required to be brought there as aforesaid, and at the time he or she shall be so required to be brought there, together with a copy of his, her, or their detainer or detainers in any such gaol or prison; every such sheriff and sheriffs, gaoler and keeper, who shall so offend in the premises, shall for every such offence forfeit and pay the sum of twenty pounds, to be recovered by the party aggrieved by action of debt, bill or information, in any of his Majesty's Courts of Record at *Westminster*, if any such offence shall be committed out of the said principality of *Wales*, or county palatine of *Chester*; and if any such offence shall be committed in the principality of *Wales*, or county palatine of *Chester*, then in some court of record in the said principality of *Wales*, or county palatine of *Chester*, within the jurisdiction of which any such offence shall be so committed, together with treble costs of suit.

Prisoner, upon proof of due notice as aforesaid having been given him, is to deliver in, upon oath, to the court a schedule of his estate and effects, and signed by him;

XVII. And be it further enacted by the authority aforesaid, That every prisoner charged, or who shall be charged in execution as aforesaid, and who in pursuance of this Act shall, at the desire of any of his, her, or their creditor or creditors, his, her, or their executors or administrators, be brought up to any such court, assizes, or great sessions as aforesaid, shall, on proof being there first made of such notices as are hereinbefore directed to be given, having been given, deliver in there in open court, upon oath, within the time hereinbefore for that purpose prescribed, a full, true and just ac-

(1) A prisoner who had applied to be discharged, and having delivered in a paper by way of schedule, declaring that he had no effects, and remanded upon the undertaking of the plaintiff for the payment of his groats, cannot be brought up a second time under this clause at the instance of the plaintiff, for the purpose of amending his schedule, and assigning property before concealed, even with his own consent; Hutchins v. Hesketh, 1 B. and P. 143.

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count, disclosure and discovery, in writing, of the whole of his or her real and personal estate, and of all books, papers, writings and securities relating thereto, and also of all incumbrances then affecting the same, and the respective times when made, to the best of his or her knowledge and belief (other than and except the necessary wearing apparel and bedding of such prisoner, and his or her family, and the necessary tools or instruments of his or her respective trade or calling, not exceeding the value of ten pounds in the whole) which account shall be subscribed with the proper name or mark of the prisoner respectively, who shall so deliver in the same: and on the delivering in of any such account, the estate and effects of every such prisoner shall be assigned and conveyed by such prisoner respectively, by a short indorsement on the back of every such account as shall be so delivered in, to such person or persons as the court, judge or judges, justice or justices, in which or to whom any such account shall be so given in, shall order or direct, in trust, and for the benefit of the creditor or creditors, who shall have required any such prisoner to be brought up as aforesaid, and of such other creditor or creditors (if any) of every such respective prisoner at whose suit or suits any such prisoner shall be charged in custody, or in execution in any such prison or gaol, and who shall, by any memorandum or writing to be signed by such creditor or creditors respectively, before any such conveyance or assignment shall be made, consent to any such prisoner's being discharged out of gaol or prison, at his, her, or their suit or suits, and also agree to take or accept a proportionable dividend of such prisoner's estate and effects, with the creditor or creditors who shall have required any such prisoner to be brought up as aforesaid; and if there shall be no other creditor or creditors as aforesaid of such prisoner, or there being any such, if such other creditor or creditors as aforesaid shall not agree in writing to discharge such prisoner and accept such proportionable dividend as aforesaid of the estate and effects of any such prisoner; then in trust for the creditor or creditors only who shall require any such prisoner to be brought up for the purpose aforesaid: And by such assignment and conveyance as aforesaid, all the prisoner's estate and effects shall be vested in the creditor or creditors to whom the same shall be assigned and conveyed in trust as aforesaid; and if any overplus shall remain of any such prisoner's estate after payment of the debt, or damages and costs which shall be due to any creditor or creditors respectively at whose suit or suits any such prisoner as aforesaid, shall, in pursuance of this Act, be discharged out of gaol or prison, on delivering up his or her estate and effects as aforesaid, and all reasonable charges expended in or by means of getting in of such estate or effects, the same shall be paid to such prisoner, his or her executors, administrators or assigns: And upon every such discovery, assignment and conveyance, being made and executed by any such prisoner to the satisfaction of the court, judge or judges of assize, justice or justices of great sessions, before whom the same shall be respectively made, every such prisoner and prisoners shall, by such court, judge or judges, justice or justices, be discharged and set at liberty, in the actions and charges, at the suit of the creditor or creditors, his, her, or their executors or administrators, who shall require any such prisoner to be so brought up, and also in the actions and charges of every other creditor of any such prisoner, his, her, or their executors or administrators, who shall sign any such consent as aforesaid, for any such prisoner's discharge, with the same benefit of making use of such his or her discharge, as is hereinbefore provided for prisoner's seeking, and who shall obtain their discharge under the provisions contained in the former part of this Act; and no greater fee than two shillings and sixpence in the whole, shall be paid or taken for any such discharge, by all or any officer or officers of any such courts, assizes, or great sessions; and no stamp shall be necessary on any such assignment and conveyance as aforesaid, or any rule or order which shall be made for any such discharge; but all the future effects of every such prisoner (other than and except the necessary wearing apparel and bed-

and is to assign and convey the same in trust, for the benefit of his creditors,

they agreeing to his discharge and to accept a proportionable dividend of his effects;

but if any shall refuse to agree thereto, then the same to be in trust for the creditors, only requiring the prisoner to be brought up for the purpose aforesaid.

Overplus remaining after all charges, to be paid to the prisoner.

Prisoner complying, to the satisfaction of the court, to be set at liberty;

paying for his discharge-fees 2s. 6d.

Future effects of the prisoner liable to debts unsatisfied;

ding of such prisoner, and his or her family, and the necessary tools or instruments of his or her respective trade or calling) shall be and remain liable to satisfy his or her debts, if the same shall not be fully paid from his or her estate which shall be assigned and conveyed as aforesaid; and no advantage shall be had or taken in any action or suit which shall be hereafter commenced against any such prisoner, his or her heirs, executors or administrators, for that the cause of action did not accrue within six years next before the commencing of any such action or suit, unless such prisoner was entitled to take such advantage before he or she stood charged in custody by virtue of the original suit or action; and in any such case the same may be pleaded by any such prisoner, his or her heirs, executors or administrators: And if any prisoner charged, or who shall be charged in execution in any prison or gaol, and who shall be required as aforesaid to be brought up to any such court, assizes, or great sessions as aforesaid, shall neglect or refuse to deliver in and subscribe such just and true account of his or her whole estate and effects in any such court, or at any such assizes or great sessions as aforesaid, as the case may happen to be, within the time hereinbefore limited or appointed for the doing thereof, or within sixty days then next following, without offering and making appear some just excuse for every such neglect or refusal, to be allowed of by the court, judge or judges of assize, justice or justices of great sessions as aforesaid, or who shall refuse to assign or convey his or her estate and effects, according to the order of any such court, judge or judges, justice or justices as aforesaid; he or she so offending in any of the said cases, and who shall be convicted of any such offence upon any indictment found against him or her, shall thereupon have judgment for transportation pronounced against him or her, and shall be transported according to the laws made and now in force for transportation of felons, to some of His Majesty's colonies or plantations in *America*, for the term of seven years: And if any such prisoner shall deliver in any false or untrue account of his or her estate or effects, or shall designedly conceal, and not insert in the account he or she shall deliver in and subscribe as aforesaid, any books, papers, securities or writings, relating to his or her estate and effects, with intent to defraud his or her creditor or creditors, and shall be thereof convicted on any indictment found against him or her in respect thereof; he or she so offending and being convicted as aforesaid thereof, shall suffer the pains and penalties which by law are to be inflicted on any person convicted of wilful perjury.

and no advantage to be taken of the statute of limitation, unless he was entitled thereto before he stood charged in custody on the original suit.

Prisoner neglecting or refusing to deliver in a schedule of his estate and effects, or to make an assignment and conveyance thereof,

to be transported for seven years;

and delivering in a false account,

to suffer the pains and penalties of wilful perjury.

XVIII. Provided also, and be it further enacted by the authority aforesaid, That if any person who shall take any oath as by this Act is required to be taken, shall, upon any indictment for perjury, be convicted by his, her, or their own confession, or by verdict of twelve lawful men; the person so convicted shall suffer the pains and forfeitures which by law are to be inflicted on any person convicted of wilful perjury; and shall likewise be liable to be taken on any process *de novo*, and charged in execution for the said debt, in the same manner as if he or she had not been discharged, or not taken or charged in execution before, and shall never after have the benefit of this Act: any thing hereinbefore contained to the contrary notwithstanding.

Persons convicted of perjury, to suffer in like manner, &c.

XIX. Provided likewise, and it is hereby further enacted, That if the effects of any prisoner or prisoners, which shall be assigned and conveyed in pursuance of this Act, shall not extend to satisfy the whole debt due to the creditors as aforesaid of the prisoner who shall be so discharged, and the fees due to the warden, marshal or gaoler, from any such prisoner; then such warden, marshal or gaoler, shall only receive a proportionable dividend from such prisoner's estate, in respect of such fees, *pro rata* with the other creditors as aforesaid of such prisoner or prisoners.

If the prisoner's effects shall not satisfy his debt, and warden's fees, &c. warden to receive only a proportional dividend with the other creditors.

XX. Provided further, and be it hereby also enacted, That the prisoner or prisoners who shall be so discharged by virtue of this Act, shall never after be arrested for the same debt or debts; nor shall any action

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of debt be brought against him, her, or them, on any such judgment, unless he, she, or they shall, under this Act, be convicted of wilful perjury; but notwithstanding any discharge obtained by virtue of this Act for the person of any such prisoner or prisoners, the judgment obtained against every such prisoner or prisoners shall continue and remain in force, and execution may at any time be taken out thereon, against the lands, tenements, rents or hereditaments, goods or chattels of any such prisoner or prisoners, other than and except the necessary wearing apparel and bedding for him, her, or themselves and family, and the necessary tools for the use of his, her, or their trade or occupation, not exceeding ten pounds in value in the whole, as if he, she, or they had never been before arrested, taken in execution, and released out of prison, by virtue of, or under this Act.

Assignees may compound with the creditors in full discharge of their debts;

XXI. And be it further enacted by the authority aforesaid, That any assignee or assignees to whom, by virtue of this Act, the estate or effects of any prisoner or prisoners discharged by this Act shall be assigned, is and are hereby empowered to make composition with any debtors or accountants to such prisoner or prisoners where the same shall appear necessary or reasonable, and to take such reasonable part of any debt due, as can upon any such composition be gotten, in full discharge of such debt or account;

and submit disputes relating to the prisoners's estate and debts, &c. to arbitration, &c.

and also to submit any difference or dispute concerning any part of any such prisoner's estate or effects, or by reason or means of any matter, cause or thing relating thereto, or to such prisoner or prisoners, or in respect of any debt claimed to be due to such prisoner or prisoners, to the final end and determination of arbitrators to be chosen by the said assignee or assignees, and the party or parties with whom any such difference shall be; and if such arbitrators cannot agree in the same, then to submit the same to the determination of any umpire to be chosen by them, or otherwise to settle and agree the matter in difference or dispute between them, in such manner as such assignee or assignees shall think fit, and can agree;

the same to be binding to creditors and prisoners.

and the same shall be binding, as well to all other of the said prisoner or prisoners' creditors as aforesaid who shall have charged him, her, or them, in custody or execution, as also to every such prisoner and prisoners;

Assignees indemnified therein.

and every such assignee and assignees is and are indemnified for what he or they shall fairly, and without any fraudulent design, do in the premises, according to the direction of this Act.

On complaint to court of any insufficiency, fraud, mismanagement, or other misbehaviour of the assignees,

XXII. And to the intent the estate and effects of such prisoner or prisoners who shall be discharged by virtue of this Act may be truly and fairly applied, Be it further enacted by the authority aforesaid, That it shall be lawful for the respective courts at *Westminster*, from whence any process issued upon which any such prisoner or prisoners was or were charged in execution, and whose estate and effects in pursuance of this Act shall have been assigned as by this Act is directed, or where any such prisoner shall have been charged in execution by process issued out of any other court, it shall be lawful for the judges of the Courts of *King's Bench*, *Common Pleas* and *Exchequer*, or any one of them, from time to time, on the petition of any creditor of such prisoner or prisoners who had charged any such prisoner in execution, or of such prisoner or prisoners, to any such court or any judge thereof, complaining of any insufficiency, fraud, mismanagement, or other misbehaviour of any such assignee or assignees, to order the respective parties concerned to attend such court or judge on the matter of every such petition, at some certain time in such order to be mentioned;

the parties to be ordered to attend the court thereon; and the court to make such order therein as they shall think just.

and every such court at *Westminster*, and also every judge thereof, on hearing the parties concerned therein, is hereby authorized to make such order and give such directions in the premises, either for the removal or displacing such assignee or assignees, and appointing any new or other assignee or assignees in the place or stead of such assignee or assignees so to be removed or displaced, or for the prudent, just or equitable management or distribution of the said estate and effects, for the benefit of the respective creditors as aforesaid of such prisoner or prisoners as

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any of the said courts at *Westminster*, or judges there respectively, shall think fit; and in case of the removal or displacing of any assignee or assignees, and the appointing of any new assignee or assignees, the estate or effects of such prisoner or prisoners shall from thenceforth be divested out of the assignee or assignees so removed or displaced, and be vested in and delivered over to, the new assignee or assignees, in the same manner and for the like intents and purposes, as the same were before vested in the former assignee or assignees.

On removal of any assignees, the prisoner's estate and effects to be vested in and delivered over to the new assignees.

XXIII. And be it further enacted, That in all and every case and cases where mutual credit shall have been given between any prisoner or prisoners who shall be discharged under this Act, and any other person or persons, bodies politic or corporate, before the delivery of any schedule or inventory of the estate and effects of any such prisoner or prisoners, upon oath, as by this Act is hereinbefore directed; then and in every such case the respective assignee or assignees of such prisoner or prisoners shall have power, and is and are hereby required, on his or their part or parts, to state and allow an account between them; and nothing more shall be deemed to be vested by any assignment which shall be made in pursuance of this Act, as the estate or effects of such prisoner or prisoners, than what shall appear to have been due to him, her, or them respectively, and to be justly coming to him, her, or them, on or for the balance of such account when truly stated.

Where mutual credit hath been given, the assignees may only state the account, and demand the balance.

XXIV. Provided always, and be it further enacted by the authority aforesaid, That no person or persons, who hath or have already taken or shall hereafter take the benefit of any Act for the relief of insolvent debtors, shall have or receive any benefit or advantage of or under this Act, or be deemed to be within the meaning hereof, so as to gain any discharge, unless compelled by any creditor to discover and deliver up his or her estate and effects; any thing herein contained to the contrary notwithstanding.

None entitled to the benefit of this act who have taken or shall take the benefit of any act of insolvency, unless compelled by a creditor to deliver up his estate and effects.

XXV. And be it also enacted by the authority aforesaid, That this Act, or any thing herein contained, shall not extend, or be construed to extend, to that part of *Great Britain* called *Scotland*: (1)

This act not to extend to Scotland.

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[ No. XXX. ] 10 George III. c. 50.—An Act for the further preventing delays of justice by reason of privilege of Parliament.

[Inserted *post*. Class V.—Some of the provisions relate to persons not having privilege of Parliament.]

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[ No. XXXI. ] 19 George III. c. 70.—An Act for extending the provisions of an Act, made in the twelfth year of the reign of King *George* the First, intituled, "An Act to prevent frivolous and vexatious Arrests;" and for other purposes.

[See *post*, Title *Inferior Courts*.]

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[ No. XXXII. ] 33 George III. c. 5.—An Act for the further relief of Debtors, with respect to the imprisonment of their Persons; and to oblige Debtors, who

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(1) It was omitted to state, by way of note to Section I, that in an action against a sheriff's officer for taking more than his legal fee, the plaintiff must prove the sum allowed by law; the stat. 23 Hen. VI. not being the rule: Martin *v.* Slade, 2 N. R. 59.

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shall continue in execution in prison beyond a certain time, and for sums not exceeding what are mentioned in the Act, to make discovery of, and deliver, upon oath, their estates for their creditors' benefit.

33 George III. c. 5. Preamble. 32 George II. cap. 28. recited.

'WHEREAS it may be reasonable to extend the benefits of an Act, 'passed in the thirty-second year of the reign of his late Majesty 'King *George* the Second, of glorious memory, intituled, "An Act 'for relief of Debtors, with respect to the Imprisonment of their per-'sons; and to oblige Debtors, who shall continue in execution in pri-'son beyond a certain time, and for sums not exceeding what are men-'tioned in the Act, to make discovery of, and deliver, upon oath, their 'estates for their creditors' benefit," to several persons who have neg-'lected or shall neglect to take the benefit of the same, within the time 'limited in the said Act, and also to several persons who were not enti-'tled to any benefit under the said Act:' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That, from and after the passing of this Act every person now or hereafter in execution for any sum or sums of money not exceeding three hundred pounds shall be entitled to such relief as by an Act passed in the thirty-second year of his late Majesty King *George* the Second, intituled, "An Act for Relief of Debtors, with respect to the imprisonment of their persons; and to oblige Debtors who shall continue in execution in prison beyond a certain time, and for sums not exceeding what are mentioned in the Act, to make discovery of, and deliver upon oath, their estates for their creditors' benefit," is granted to persons charged in execution for any sum or sums of money not exceeding one hundred pounds.

Persons charged in execution for sums not exceeding 300*l.* to be entitled to the relief of recited Act.

Debtors in execution for sums not exceeding 300*l.* may be compelled to deliver up their effects.

III. And be it further enacted by the authority aforesaid, That every creditor or creditors, his, her, or their executors or administrators, at whose suit any debtor shall be charged in execution for any sum or sums not exceeding the sum of three hundred pounds, shall have such remedy, by compelling such debtor to deliver up his or her estate and effects for the benefit of his or her creditors, as is provided by the before recited Act, in cases where the sum for which such debtor shall be in execution does not exceed the sum of one hundred pounds.

Persons committed on attachments for not paying money awarded by arbitration, &c. to be entitled to the benefit of this Act.

'IV. And whereas many persons are often committed on attachments, 'for not paying money awarded to be paid under submissions to 'arbitration by rules of court, or under submissions to arbitration 'bonds, and which submissions have been made rules of the court, in 'pursuance of an Act, passed in the ninth and tenth years of the reign 'of *William* the Third, for determining differences by arbitration, and 'likewise for not paying of costs, duly and regularly taxed and 'allowed by the proper officer, after proper demands made for that 'purpose, and also upon any writ of *excommunicato capiendo*, or other 'process for or grounded on the non-payment of costs or expenses in 'any cause or proceeding in any ecclesiastical court;' it is hereby declared and enacted, That all such persons are and shall be entitled to the benefit of this Act, and subject to the same terms and conditions as are herein expressed and declared with respect to prisoners for debt only.

Debtors who from ignorance or mistake have not taken the benefit of the recited or this Act in time, entitled thereto.

V. And be it further enacted, That where any debtor as aforesaid shall have neglected or shall neglect to take the benefit of the said Act or of this Act, within the time limited by the said Act or this Act, and shall make it appear to the court out of which such execution issued, that such neglect arose from ignorance or mistake, such debtor shall then be entitled to take the benefit of the said Act or of this Act, as if he or she had taken the same within the time by the said Act or this Act so limited as aforesaid: Provided always, That it shall be lawful for any creditor or creditors, at whose suit any debtor shall be so in execution as aforesaid, to file interrogatories for the examination of

such prisoner, before his or her being admitted to take the benefit of this or the before recited Act: Provided always, That this Act shall not extend to any debt or debts that may be owing to the crown, nor shall it affect any proceeding which at any time may be lawfully had under or by virtue of any commission of bankrupt: Provided also, That this Act, or any thing herein contained, shall not extend to that part of *Great Britain* called *Scotland*: Provided also, That this Act shall continue and be in force for five years, and from thence to the end of the then next Session of Parliament, and no longer.

No. XXXII. 33 Geo. 3. c. 5.

Act not to extend to debts due to the Crown, &c.

Continuance of Act.

[Made perpetual by 39 Geo. III. c. 50.]

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## [ No. XXXIII. ] 37 George III. c. 85.—An Act to amend so much of an Act, made in the thirty-second Year of the Reign of King *George* the Second, intituled, "An Act for the Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their estates, for their Creditors' Benefit," as relates to the weekly Sums thereby directed to be paid to Prisoners in Execution for Debt, in the Cases therein mentioned.—[19*th June* 1797.]

'WHEREAS by an Act, passed in the second year of the reign of his late Majesty King *George* the Second, intituled, "An Act for the Relief of Debtors with respect to the Imprisonment of their Persons," it was, among other things, enacted, That prisoners charged in execution for any debt or debts under the sum therein mentioned, who should make an assignment of their estate and effects for the benefit of their creditors, in the manner therein specified, should be entitled to be discharged, or to have an allowance, not exceeding the sum of two shillings and fourpence *per* week, to be made to them by such of their creditors charging them in execution, as should insist on their being detained in prison; which Act was by several subsequent Acts amended and continued until the first day of June, One thousand seven hundred and fifty-nine: And whereas, by an Act, passed in the thirty-second year of the reign of his late Majesty King *George* the Second, intituled, "An Act for the Relief of Debtors with respect to the Imprisonment of their Persons; and to oblige Debtors who shall continue in execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make discovery of, and deliver upon Oath, their Estates, for their Creditors' Benefit;" it is, amongst other things, enacted, that, from and after the fifteenth Day of *June*, One thousand seven hundred and fifty-nine, if any person or persons should be charged in execution for any sum or sums of money, not exceeding, in the whole, the sum of one hundred pounds, or on which execution or executions there should remain due a sum or sums of money not amounting to above the said sum of one hundred pounds, and should be minded to deliver up to his or their creditor or creditors, who should so charge him, her, or them in execution, all his, her, or their estate and effects, for or towards the satisfaction of the debt or debts wherewith he, she, or they should so stand charged, it should and might be lawful to and for any such prisoner or prisoners, to exhibit such petition to such court of law, and to carry on such proceedings thereon as in the said last mentioned Act are particularly specified and set forth; and that the several requisites contained in the said Act, having been complied with on the part of such prisoner or prisoners as therein mentioned, it should and might be lawful for

37 George III. c. 85.

2 Geo. 2. c. 22 and

32 Geo. 2. c. 28. recited.

No. XXXIII. 37 Geo. III. c. 85.

'such court, by rule or order thereof, immediately to cause such prisoner or prisoners to be discharged, upon his, her, or their executing 'such assignment and conveyance of his, her, or their estate and effects 'in the manner therein mentioned, unless such creditor or creditors 'who should have charged any such prisoner or prisoners in execution, 'his, her, or their executors or administrators, should agree, by writing, in the manner therein mentioned, to pay and allow weekly a 'sum not exceeding two shillings and fourpence, as any such court 'should think fit, unto such prisoner, to be paid so long as any such 'prisoner should continue in prison, in execution at the suit of any such 'creditor or creditors, with such remedy, in case of any failure in the 'payment of such weekly sum, as in the said Act is particularly mentioned: And whereas it is also by the said Act further enacted, that 'where more creditors than one should charge any prisoner or prisoners in execution, and should desire to have such prisoner or prisoners 'detained in prison, each and every such creditor and creditors should 'only respectively pay such weekly sum of money, not exceeding one 'shilling and sixpence a week, as therein mentioned; And whereas 'such allowance is now insufficient for the purpose for which it was 'intended:' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the fifth day of July One thousand seven hundred and ninety-seven, so much of the said last recited Act, as relates to the amount of the several and respective sums, not exceeding two shillings and fourpence, and one shilling and sixpence, to be paid and allowed as aforesaid, shall be and the same is hereby repealed.

From July 5, 1797, so much of last recited Act (§ 13 and 14) as relates to weekly allowances, repealed.

II. And be it further enacted, That it shall and may be lawful for all and every such prisoner and prisoners in execution for debt, on the said fifth day of *July*, One thousand seven hundred and ninety-seven, who shall be by virtue of any rule or order of any court entitled to receive from any creditor or creditors any sum not exceeding the said sum of two shillings and fourpence, to make an application by petition to the court, in the prison whereof such prisoner or prisoners shall remain and be charged in custody, praying that such weekly allowance be ordered to be increased by virtue of this Act; and that upon due notice being given to such creditor or creditors of such petition, it shall and may be lawful for such court to hear the matter thereof, and by rule or order of such court immediately to cause such prisoner or prisoners to be discharged, unless such creditor or creditors, his, her, or their executors, administrators, or assigns, doth or do insist upon such prisoner or prisoners being detained in prison, and shall agree in the manner mentioned in the said lastmentioned Act, with respect to the allowance not exceeding two shillings and fourpence *per* week, to pay and allow weekly a sum not exceeding three shillings and sixpence, as any such court shall think fit, unto such prisoner, to be paid at and for such time or times, and under and subject to the like regulations as in the said Act are expressed with respect to the said allowance not exceeding two shillings and fourpence *per* week.

Prisoners entitled to allowance of 2*s.* 4*d.* may apply to the court to have it increased to 3*s.* 6*d.* per week.

III. And be it further enacted, That in all cases where any person or persons, charged in execution for debt at any time or times from and after the said fifth day of *July*, One thousand seven hundred and ninety-seven, would have been entitled to be discharged under the provisions of the said Act lastmentioned, unless their creditor or creditors would agree as therein mentioned to pay and allow a weekly sum not exceeding two shillings and fourpence to such prisoner, as any such court as is therein mentioned should think fit, it shall and may be lawful for such court, by rule or order thereof, immediately to cause the said prisoner or prisoners to be discharged, upon such prisoner or prisoners executing such assignment and conveyance of his or her estate and effects as is therein mentioned, unless the creditor or creditors doth or do insist upon such

Debtors entitled to their discharge under last recited Act, if not paid weekly allowance, may be discharged, unless creditors agree to pay them not exceeding 3*s.* 6*d.* weekly.

No. XXXIII. 37 Geo. III. c. 85.

prisoner or prisoners being detained in prison, and shall agree, by writing signed in the manner in the said lastmentioned Act, to pay and allow weekly a sum not exceeding three shillings and sixpence, as any such court shall think fit, unto the said prisoner or prisoners, to be paid at such time and times, and in such manner, and upon the same terms and conditions, and under the same rules and regulations in every respect, as in and by the said Act is provided with respect to the allowance thereby directed to be made.

Where more creditors than one insist on a debtor's detention, they are each to pay him not exceeding 2*s.* weekly.

IV. Provided always, and be it enacted, That where more creditors than one shall have already charged, or shall at any time or times hereafter, from and after the said fifth day of *July*, One thousand seven hundred and ninety-seven, charge, under and by virtue of the said last recited Act, any person or persons in execution, and shall desire to have such prisoner or prisoners detained in prison, each and every such creditor and creditors shall respectively pay such weekly sum of money only, not exceeding two shillings, on every *Monday* in every week, to or for such prisoner or prisoners respectively, as the court before whom any such prisoner or prisoners shall be brought up to be discharged, under the powers, authorities, and directions, contained in the said last recited Act, shall, at the time of his, her, or their being remanded, on such note for the payment of the weekly sum ordered to be paid, as in the said last recited Act is required and provided being given, direct or appoint.

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## [ No. XXXIV. ] 39 George III. c. 50.—An Act for making perpetual an Act, made in the thirty-third Year of the Reign of his present Majesty, intituled, "An Act for the further Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery, and deliver, upon Oath, their Estates for their Creditors' Benefit."—[*13th June* 1799.]

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## [ No. XXXV. ] 41 George III. c. 64.—An Act for the further Relief of Debtors, with respect to the Imprisonment of their Persons.—[*23d June* 1801.]

EXP.

41 George III. c. 64.

'WHEREAS it might tend to the discharge from imprisonment of many prisoners in execution for debt, if their creditors were enabled to discharge such debtors, without losing the whole benefit of the judgments obtained against such debtors;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, it shall be lawful for any creditor or creditors, at whose suit any debtor or debtors is or are or shall be in prison, and taken or charged in execution for any sum of money, by writing signed by such creditor or creditors, or by one of them, for and on the behalf of himself or herself, and the others of them (being complainants in the same action), to signify or declare his, her, or their consent to the discharge of such debtor or debtors from the gaol or prison in which he, she, or they is or are or shall be confined in execution at the suit of such creditor or creditors, without losing the benefit of the judgment upon which the execution against such debtor or debtors issued, except as hereinafter provided; and that for and notwithstanding the discharge of any debtor or debtors in pursuance of

Any creditor at whose suit a debtor is charged in execution, may consent to his discharge, without losing the benefit of the judgment upon which the execution issued; except that the person of the debtor

No. XXXV. 41 Geo. III. c. 64.

shall not be again liable to arrest for the same debt, nor the bill be proceeded against.

such consent as aforesaid, the judgment upon which such debtor or debtors was or were taken or charged in execution, shall continue and remain in full force to all intents and purposes except as hereinafter provided; and it shall be lawful for such creditor or creditors at any time to take out execution on every such judgment against the lands, tenements, hereditaments, goods and chattels of such debtor or debtors, or any of them (other than and except the necessary apparel and bedding of him, her, or them, or his, her or their family, and the necessary tools for his, her, or their trade or occupation, not exceeding the value of ten pounds in the whole), or to bring any action or actions on every such judgment, or to bring any action or use any remedy for the recovery of his or their demand, against any other person or persons liable to satisfy the same, in such and the same manner as such creditor or creditors could or might have had or done in case such debtor or debtors had never been taken or charged in execution upon such judgment. Provided always, That no debtor or debtors, who shall be discharged in pursuance of this Act, shall at any time afterwards be taken or charged in execution, or arrested upon any judgment hereinbefore declared to continue and remain in full force, or in any action which may be brought in any such judgment, and that no proceeding by *scire facias*, action, or otherwise, shall be had against any bail in the action in which such judgment was obtained.

Executors may consent to the discharge of debtors, as the creditors, if living, could do.

II. And be it further enacted by the authority aforesaid, That the executors and administrators of any such creditor as aforesaid shall and may consent to the discharge of any debtor or debtors to their testator or intestate, in such and the same manner, and with the same advantages and consequences, in all respects, as such creditor, if living, might or could have done in pursuance of this Act; and such executors or administrators respectively shall not, by reason of any such discharge in pursuance of this Act, be deemed guilty of a *devastavit*, or chargeable with the debt due from the person or persons so discharged.

Sheriffs, &c. within 24 hours after the consent of a creditor is produced, shall discharge the debtor, if detained only at his suit.

III. And be it further enacted by the authority aforesaid, That every sheriff, gaoler, or keeper, in whose prison, gaol, or custody any debtor or debtors is or are or shall be confined or detained in execution, shall, and every of them is hereby required, within twenty-four hours next after such consent in writing of any creditor or creditors as hereinbefore mentioned shall have been produced to and left with such sheriff, gaoler, or keeper, or his deputy or agent at such prison or gaol (the handwriting or mark of such creditor or creditors to such consent in writing being duly proved by an affidavit of some credible person, to be thereto annexed, and to be sworn before one of the judges of the court out of which the execution against such debtor or debtors issued, or a commissioner duly authorized to take affidavits in such court), to discharge and set at liberty the debtor or debtors to whose discharge such consent shall be signified or declared as aforesaid, if he, she, or they shall be kept or detained in custody only upon the execution issued at the suit of the creditor or creditors signifying or declaring such consent.

Act shall not extend to Scotland.

IV. And be it further enacted by the authority aforesaid, That this Act shall not extend, or be construed to extend, to that part of *Great Britain* called *Scotland*.

Continuance of Act.

V. And be it further enacted, That this Act shall continue and be in force for three years, and from thence to the end of the then next Session of Parliament, and no longer. (1)

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[ No. XXXVI. ] 43 George III. c. 46.—An Act for the more effectual Prevention of frivolous and vexatious

(1) This Act does not appear to have been continued, but is inserted for the purpose of suggesting the propriety of its revival.

**Arrests and Suits; and to authorize the levying of Poundage upon Executions in certain Cases.—[24th *May* 1803.]**

No. XXXVI. 43 Geo. III. c. 46.

'FOR the more effectual prevention of frivolous and vexatious arrests, and for the relief of persons imprisoned on mesne process;' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *June* One thousand eight hundred and three, no person shall be arrested or held to special bail upon any process issuing out of any court, within those parts of the United Kingdom of *Great Britain* and *Ireland*, called *England* and *Ireland*, for a cause of action not originally amounting to such sum for which such person is by the laws now in being liable to be arrested and held to bail, over and above and exclusive of any costs, charges, and expenses that may have been incurred, recovered, or become chargeable in or about the suing for or recovering the same, or any part thereof.

No person shall be arrested on process of any court in England or Ireland, for a cause of action not originally sufficient to require bail.

II. 'And whereas it does and may happen that persons arrested upon 'mesne process may not be able to find sufficient sureties for their 'appearance at the return of the writ, and yet may be able to make a 'deposit of the money for which they are so arrested, together with a 'competent sum for costs: And whereas it is expedient that persons 'arrested should, upon making such deposit, be permitted to go at 'large until the return of the writ without finding bail to the sheriff for 'their appearance at the return thereof;' Be it therefore enacted by the authority aforesaid, That all persons who shall, from and after the first day of *June* in the year of our Lord One thousand eight hundred and three, be arrested upon mesne process, within those parts of the United Kingdom of *Great Britain* and *Ireland* called *England* and *Ireland*, shall be allowed in lieu of giving bail to the sheriff, to deposit in the hands of the sheriff, by delivering to him, or to his under-sheriff, or other officer to be by him appointed for that purpose, the sum indorsed upon the writ by virtue of the affidavit for holding to bail in that action, together with ten pounds in addition to such sum to answer the costs which may accrue or be incurred in such action up to and at the time of the return of the writ; and also such further sum of money, if any, as shall have been paid for the King's fine upon any original writ; and shall thereupon be discharged from such arrest as to the action in which he, she, or they shall so deposit the sum indorsed on the writ; and that the sheriff shall in every such case, at or before the return of the said writ, pay into the court in which such writ shall be returnable the sum of money (1) so deposited with him as aforesaid; (2) and thereupon in case the defendant or defendants shall afterwards duly put in and perfect bail (3) in such action according to the course and practice of such court, the sum of money so deposited and paid into court as aforesaid shall, by order of the court, upon motion to be made for that purpose, be repaid to such defendant or defendants; but in case the defendant or defendants shall not duly put in and perfect bail in such action, then and in such case,

Persons arrested on mesne process, instead of giving bail, may deposit with the sheriff, &c. the sum indorsed on the writ with 10*l.* to answer costs, &c.

Such deposit shall be paid into court, and on the defendant's perfecting bail be repaid him; or on bail not being put in, be paid over to the plaintiff, &c. by order of court.

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(1) The chief clerk is not entitled to poundage on money paid into court by the sheriff, under this section; Stewart *v.* Bracebridge, 2 B. & A. 770. Where the sheriff levied under a *fi. fa.* and received the money, and afterwards the judgment and execution being set aside for irregularity, and the money ordered to be returned, paid it back with the assent of the plaintiff: Held that the stat. 43 Geo. III. c. 46. does not take away his remedy by action of debt against the plaintiff for his poundage; Rawstorne *v.* Wilkinson, 4 M. & S. 256.

(2) The sheriff liberating the defendant without receiving the money, is not entitled to be relieved from an attachment upon paying the debt sworn to and costs, but is answerable for the whole debt; R. *v.* Sheriff of London, 9 E. 316.

(3) If the bail are put in, who are excepted to, and instead of justifying render the defendant, the plaintiff is not entitled to the deposit, but the defendant may receive it back; Henford *v.* Harris, 4 Taunt. 669. So when the defendant after putting in bail had rendered himself, (although, come semble, without exception); Chadwick *v.* Bulbye, 3 M. and S. 283.

No. XXXVI. 43 Geo. III. c. 46.

the said sum of money so deposited and paid into Court as aforesaid, shall, by order of the court, upon a like motion to be made for that purpose, be paid over to the plaintiff or plaintiffs in such action, who shall be thereupon authorized to enter a common appearance, or file common bail for such defendant or defendants, if the said plaintiff or plaintiffs shall so think fit; such payment to the plaintiff or plaintiffs to be made subject to such deductions, if any, from the sum of ten pounds deposited and paid to answer the costs as aforesaid, as upon the taxation of the plaintiff's costs, as well of the suit as of his application to the court in that behalf, may be found reasonable.

Wherever plaintiff shall not recover the amount of the sum for which defendant was held to bail (without probable cause,) defendant shall be entitled to costs under a rule of court.

III. And be it further enacted by the authority aforesaid, That in all actions to be brought in *England* or *Ireland*, from and after the said first day of *June*, in the said year of our Lord One thousand eight hundred and three, wherein the defendant or defendants shall be arrested and held to special bail, and wherein the plaintiff or plaintiffs shall not recover (1) the amount of the sum for which the defendant or defendants in such action shall have been so arrested and held to special bail, such defendant or defendants shall be entitled to costs of suit, to be taxed according to the custom of the court in which such action shall have been brought; provided that it shall be made appear to the satisfaction of the court in which such action is brought, upon motion to be made in court for that purpose, and upon hearing the parties by affidavit, that the plaintiff or plaintiffs in such action had not any reasonable or probable cause for causing the defendant or defendants to be arrested and held to special bail in such amount as aforesaid, and provided such court shall thereupon by a rule or order of the same court, direct that such costs shall be allowed to the defendant or defendants (2); and the plaintiff or plaintiffs shall upon such rule or order being made as aforesaid, be disabled from taking out any execution for the sum recovered in any such action, unless the same shall exceed, and then in such sum only as the same shall exceed the amount of the taxed costs of the defendant or defendants in such action; and in case the sum recovered in any such action shall be less than the amount of the costs of the defendant or defendants to be taxed as aforesaid, that then the defendant or defendants shall be entitled, after deducting the sum of money recovered by the plaintiff or plaintiffs in such action from the amount of his or their costs so to be taxed as aforesaid, to take out execution for such costs in like manner as a defendant or defendants may now by law have execution for costs in other cases.

In actions on judgments, plaintiffs not entitled to costs, unless by rule of court.

IV. And be it further enacted by the authority aforesaid, That in all actions which shall be brought in *England* or *Ireland*, from and after the

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(1) The Act does not extend to the case of a plaintiff in debt on bond recovering a verdict for nominal damages, and taking judgment for the penalty; Cummack *v.* Gregory, 10 E. 525. Where a bond is payable by instalments, some of which only are due, and the plaintiff arrests for the whole penalty, the Court of Common Pleas will not interfere to give the defendant his costs, under stat. 43 Geo. III. c. 46. § 3. the penalty being, in law, the sum recovered; Talbot *v.* Hodson, 2 Marsh. 527. S. C. not S. P. 7 Taunt. 251.

(2) Costs allowed under this power when the defendant paid a less sum into court, which was taken out by the plaintiff; Laidlow *v.* Cockburn, 2 N. R. 76 not where the arrest was by an executor swearing to belief (the action being on a bill for 50*l.*, on which the testator had indorsed and afterwards obliterated—*Aug.* 25, *Forty Pounds;* the sum of 40*l.* having been in fact paid)—Heath J. said, there must be a strong case against an executor to bring him within the Act; Foulkes *v.* Neighbour, 1 Marshall, 21. The defendant was held to bail on an action for 25*l.* He pleaded in abatement as to 12*l.* 10*s.* and the general issue as to the remainder, verdict for the plaintiff for the latter sum; on motion for costs under 43 Geo. III. c. 46. supported by affidavit that the defendant believed the plaintiff had sued out bailable process, for the purpose of extorting from him the whole sum: Held, not a case of malicious arrest within the statute; James *v.* Francis, 5 Price 1. The plaintiff had holden the defendant to bail, and a verdict was taken for him at the trial, subject to an order of reference, for ascertaining the amount of the damages, and the arbitrator awarded a less sum than 15*l.*; upon an application to the court to allow the defendant his costs, he must shew that the arrest was vexatious and malicious; Silversides *v.* Bowley, 1 Moore 92.

said first day of *June* in the said year of our Lord One thousand eight hundred and three, upon any judgment recovered, or which shall be recovered, in any court in *England* or *Ireland*, the plaintiff or plaintiffs in such action on the judgment, shall not recover or be entitled to any costs of suit, unless the court in which such action on the judgment shall be brought, or some judge of the same court, shall otherwise order. (1)

Plaintiffs may levy poundage, and expense of execution, beyond the judgment.

V. And be it further enacted by the authority aforesaid, That from and after the said first day of *June* in the said year of our Lord One thousand eight hundred and three, in every action in which the plaintiff or plaintiffs shall be entitled to levy under an execution against the goods of any defendant, such plaintiff or plaintiffs may also levy the poundage fees and expenses of the execution over and above the sum recovered by the judgment. (2)

On mesne process, after return thereof, defendants in custody may, in vacation, justify bail before one justice.

VI. And be it further enacted, That from and after the said first day of *June* One thousand eight hundred and three, if any defendant shall be taken, detained, or charged in custody at the suit of any person or persons upon mesne process issuing out of any of his Majesty's Courts of Record at *Westminster* or *Dublin*, and shall be imprisoned or detained thereon, after the return of such process, it shall and may be lawful for such defendant in vacation time only, and upon due notice thereof given to the attorney for the plaintiff or plaintiffs in such process, to put in and justify bail before any one of the justices or barons of the court out of which such process shall have issued, who may, if he shall think fit, thereupon order a rule to issue for the allowance of such bail, and may further order such defendant to be discharged out of custody by writ of *supersedeas*, or otherwise, according to the practice of such court, in like manner as the same is and may be done by an order of court in term time.

## [ No. XXXVII. ] 44 George III. c. 13.—An Act to prevent the Desertion and Escape of Petty Officers, Seamen, and others, from his Majesty's Service, by Means or under Colour of any Civil or Criminal Process.—[ *15th December* 1803. ]

44 George III. c. 13.

'WHEREAS many petty officers and seamen belonging to his 'Majesty's navy, and divers persons who have either voluntarily 'entered into, or been duly impressed to serve in his Majesty's navy, 'have of late years been taken out of his Majesty's service by means of 'arrests and detainers, as well both for real and pretended debts or 'causes of action, as also upon charges or accusations for alleged 'criminal offences; and such petty officers, seamen, and other persons 'as aforesaid, have been thereupon discharged out of custody, either by 'due course of law, or by the consent of the persons at whose suit or on 'whose complaint they had been so arrested, apprehended, or detained, 'with intent to enable them, and they have been thereby oftentimes 'enabled to desert and escape from his Majesty's said service, to the 'great prejudice and detriment of the said service;' for remedy whereof, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, whenever any petty officer or seaman belonging to his Majesty's navy, or any person who shall have voluntarily entered into or been impressed to serve in his Majesty's

(1) The defendant, instead of applying to stay proceedings, pleaded *nul tiel Record*, (which was evidently for delay); the Court of C. B. were of opinion that the plaintiff ought to have his costs; Garnwell *v.* Barker, 5 Taunt. 264. The section does not extend to actions or judgments of nonsuit; Bennett *v.* Neale, 14 E. 343.

(2) The statute 43 Geo. 3. c. 46. § 5. does not enable a defendant to levy the costs of an execution for his costs of an action; Baker *v.* Lyder, 7 Taunt. 779.

No. XXXVII. 44 Geo. III. c. 13.

Petty officers or seamen taken out of his Majesty's naval service for any civil or criminal matter shall be kept in custody after they are entitled to be discharged from the writ or judgment, and shall be conveyed and delivered to some commander or commissioned officer of the navy, to serve on board the Fleet.

navy, shall be arrested, apprehended, or taken in execution by any sheriff or sheriffs, or other officer or officers, either upon or by virtue of any mesne or other writ or process whatsoever, or upon or by virtue of any warrant for any alleged criminal offence, and shall be thereby taken from or out of his Majesty's sea service, or from or out of any ship or vessel appointed for receiving volunteers and impressed men to serve in his Majesty's navy, or from or out of the custody of any officer of the impress or other officer in his Majesty's sea service, with whom any such person as aforesaid shall have voluntarily agreed to enter into, or by whom any such person as aforesaid shall have been impressed to serve in, his Majesty's navy, or who shall have the custody or charge of any such person as aforesaid, the sheriff or sheriffs, gaoler or gaolers, or other officer or officers, who shall have arrested or apprehended any such petty officer, seaman, or other person as aforesaid, or in whose custody any such petty officer, seaman, or other person as aforesaid, shall happen to be, by way of detainer upon or by virtue of any such writ, process, warrant, charge or accusation, or upon or by virtue of the judgment or sentence of any court, shall not discharge any such petty officer, seaman, or other person as aforesaid, out of his or their custody, either upon payment or satisfaction of the debt or debts, cause or causes of action, or for want of prosecution for, or upon acquittal of, the charge or accusation, charges or accusations, upon which any such petty officer, seaman, or other person as aforesaid, shall be in custody as aforesaid, or by consent of the person or persons at whose suit, or on whose behalf, any such petty officer, seaman, or other person as aforesaid, shall have been arrested, apprehended, taken or detained, or upon giving bail or any other security, or upon any undertaking either to appear to, or to answer or satisfy, any such debt or debts, cause or causes of action, charge or accusation, charges or accusations; or in case of conviction for any criminal offence or offences after the expiration of any period or term for which any such petty officer, seaman, or other person as aforesaid may have been sentenced to be imprisoned, but shall detain and keep every such petty officer, seaman, and other person as aforesaid, in his or their custody, and shall thereupon forthwith, and as soon as every such petty officer, seaman, or other person as aforesaid, would be entitled to be discharged out of custody, with respect to any such writ, process, or warrant, or with respect to any such debt or debts, cause or causes of action, charge or charges, accusation or accusations, judgment or sentence, with all convenient speed, safely and securely conduct and convey, and safely and securely deliver every such petty officer, seaman, and other person as aforesaid, either unto the commander in chief of some of his Majesty's ships, or unto some commissioned officer of the navy being authorized and empowered to raise seamen for his Majesty's service, or unto some principal officer employed in regulating the service of raising men for his Majesty's fleet, whichever shall be at or nearest to the place where any such petty officer, seaman, or other person as aforesaid shall then happen to be; in order that every such petty officer, seaman, or other person as aforesaid may be detained and kept to serve on board his Majesty's fleet, as before they were liable to do; and such commander in chief, officer of the impress, or principal regulating officer as aforesaid, shall thereupon give and deliver to such sheriff or sheriffs, gaoler or gaolers, or other officer or officers as aforesaid, a certificate, directed to the treasurer of his Majesty's navy, specifying the receipt of every such petty officer, seaman, or other person as aforesaid as shall be so delivered to him respectively as aforesaid, and the places from and to which any such petty officer, seaman, or other person as aforesaid shall have been conducted and conveyed as aforesaid; and the sheriff or sheriffs, gaoler or gaolers, or other officer or officers who shall have so conducted, conveyed, and delivered as aforesaid any such petty officer, seaman, or other person as aforesaid, shall thereupon be entitled to receive of and from the said treasurer of his Majesty's navy the sum of two shillings *per* mile, and no more, for conducting conveying, and delivering as aforesaid, every such petty

How sheriff, &c. shall be paid for conducting them 2s. per mile.

officer, seaman, or other person as aforesaid, upon production to the said treasurer of the navy of such certificate.

No. XXXVII. 44 Geo. III. c. 13.

How transfer of such petty officers or seamen from one sheriff to another shall be certified.

II. And be it further enacted, That in case any such petty officer, seaman, or other person as aforesaid, shall be removed from or out of the custody of any sheriff or sheriffs, gaoler or gaolers, or other officer or officers by whom any such petty officer, seaman, or other person as aforesaid shall have been arrested or apprehended as aforesaid, or in whose custody any such petty officer, seaman, or other person as aforesaid, shall happen to be, into the custody of any other sheriff or sheriffs, gaoler or gaolers, or other officer or officers, by virtue of any writ of *Habeas Corpus*, or otherwise, the sheriff or sheriffs, gaoler or gaolers, or other officer or officers so having arrested or apprehended such petty officer, seaman, or other person as aforesaid, or in whose custody any such petty officer, seaman, or other person as aforesaid shall happen to be, shall certify in writing to the sheriff or sheriffs, gaoler or gaolers, or other officer or officers, into whose custody such petty officer, seaman, or other person as aforesaid shall be so removed, upon the back of the writ or other proceeding by which such petty officer, seaman, or other person as aforesaid shall be removed out of the custody of such sheriff or sheriffs, gaoler or gaolers, or other officer or officers as aforesaid, that such person so removed as aforesaid is a petty officer, seaman, or other person as aforesaid, as the case may be, and liable to be kept and detained for his Majesty's service; and so *toties quoties* as often as any such petty officer, seaman, or other person as aforesaid shall be removed from the custody of one such sheriff or sheriffs, gaoler or gaolers, or other officer or officers, to the custody of any other sheriff or sheriffs, gaoler or gaolers, or other officer or officers.

Sheriff, &c. neglecting to convey such petty officer or seaman as herein directed, and detaining them in custody, liable to action of trespass, at their suit.

III. Provided always, and be it further enacted, That in case any sheriff or sheriffs, gaoler or gaolers, or other officer or officers, shall neglect or refuse to conduct and convey, for the purpose aforesaid, any such petty officer, seaman, or other person as aforesaid to any distance not exceeding eighty miles for the space of two days, or to any distance not exceeding one hundred and twenty miles for the space of three days, and so to any other greater distance at the rate of forty miles *per* day, after the time that any such petty officer, seaman, or other person as aforesaid, ought to be conducted and conveyed as aforesaid, for the purpose aforesaid, according to the directions of this Act, but shall wilfully or negligently detain and keep any such petty officer, seaman, or other person as aforesaid in his or their custody for any space of time over and above the several spaces of time hereinbefore in that behalf specified, without conducting and conveying him as aforesaid, for the purpose aforesaid, then all and every such sheriff or sheriffs, gaoler or gaolers, or other officer or officers, shall be subject and liable to be impleaded in an action of trespass upon the case, at the suit of every such petty officer, seaman, or other person as aforesaid, who shall be so detained as aforesaid; any thing herein contained to the contrary notwithstanding.

Penalty on sheriff, &c. for suffering such petty officer or seaman to escape.

IV. And be it further enacted, That in case any sheriff or sheriffs, gaoler or gaolers, or other officer or officers, shall not safely and securely conduct and convey, and safely and securely deliver, any such petty officer, seaman, or other person as aforesaid, either unto such commander in chief, officer of the impress, or principal regulating officer as aforesaid, whichever shall be at or nearest to the place where such petty officer, seaman, or other person as aforesaid, shall then happen to be, but shall either wilfully or negligently permit or suffer any such petty officer, seaman, or other person as aforesaid, to escape and go at large, all and every such sheriff or sheriffs, gaoler or gaolers, or other officer or officers, shall for every such offence forfeit and pay the sum of one hundred pounds, to be sued for and recovered in any of his Majesty's Courts of Record at *Westminster* for offences committed in *England*, in his Majesty's Court of Exchequer at *Edinburgh* for offences committed in *Scotland*, and in any of his Majesty's Courts of Record in *Dublin* for offences committed in *Ireland*, by action of debt, bill, plaint,

No. XXXVII. 44 Geo. III. c. 13.

or information, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed; one moiety of which penalty shall be paid to his Majesty, his heirs and successors, and the other moiety thereof to him or them who shall sue for the same, together with full costs of suit.

"Limitation of actions, three calendar months—Venue in the county. "—General issue; treble costs, § 5.—Act may be altered or repealed "this Session, § 6."

## [ No. XXXVIII. ] 48 George III. c. 123.—An Act for the Discharge of Debtors in Execution for small Debts, from Imprisonment in certain Cases.—[*30th June*, 1808.]

48 George III. c. 123.

'WHEREAS it might tend greatly to the relief of certain debtors in 'execution for small debts, and at the same time occasion no 'material prejudice to trade and public credit, if such debtors should, 'after a limited period of imprisonment, be allowed the benefit of a 'discharge therefrom, the creditors at whose suit they were so in exe-'cution being at the same time authorized to take out other writs of 'execution against the land and goods of such debtors, or to use other 'remedy for the satisfaction of their debts, as if the persons of such 'debtors had never been taken in execution;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, all persons in execution upon any judgment in whatsoever court the same may have been obtained, and whether such court be or be not a court of record, for any debt or damages not exceeding the sum of twenty pounds, (1) exclusive of the costs recovered by such judgment, and who shall have lain in prison thereupon for the space of twelve successive calendar months next before the time of their application to be discharged as hereinafter mentioned, shall and may, upon his, her, or their application for that purpose in term-time made to some one of his Majesty's superior Courts of Record at *Westminster*, to the satisfaction of such court, be forthwith (2) discharged out of custody, as to such execution, by the rule or order of such court: Provided always, That in the case of any such application being made to be discharged out of execution upon a judgment obtained in any of his Majesty's superior Courts of Record at *Westminster*, such application shall be made to such one of those courts only, wherein such judgment shall have been obtained, and that whether the person so in execution shall then be actually detained in the gaol or prison of the same court, or shall then stand committed on *Habeas Corpus* to the gaol or prison of another court: Provided always, that if it shall happen that any such discharge shall have been unduly or fraudulently obtained upon any false allegation of circumstances, which if true might have entitled the prisoner to be discharged by virtue of this Act, such prisoner shall, upon the same being made appear to the satisfaction of the court by whose rule or order the said prisoner had been so discharged, be liable to be again taken in execution and remanded to his former custody by the rule or order of the same court: Provided also, That no sheriff, gaoler, or other person whatsoever, shall be liable as for the escape of any such prisoner in respect of his enlargement during such time as he shall have been at large, by means of such his undue discharge as aforesaid: Provided always, That for and notwithstanding the discharge of any debtor or debtors by virtue of this Act, the judgment whereupon any such debtor or debtors was or were taken or charged in execution, shall nevertheless continue and remain in full force to all intents and

Persons having lain in prison for a year in execution on judgment of any court, whether of record or not, for any debt or damages not exceeding 20*l.* (exclusive of costs), shall be discharged, on application to the courts at Westminster in term time.

Persons fraudulently obtaining discharge, may be retaken in execution, &c.

Such discharge no escape.

Estate of the debtors so discharged shall remain liable.

(1) The Act extends to costs under 20*l.* recovered upon judgment of nonsuit; Roylance *v.* Hewling, 3 M. and S. 282.

(2) On a motion for the discharge of an insolvent debtor under the statute 48 George III. c. 123. § 1. the rule is in the first instance only a rule *nisi*; *Ex-parte* Neilson, 7 Taunt. 467.

purposes, except as to the taking in execution the person or persons of such debtor or debtors thereupon, as is hereinafter provided: And that it shall and may be lawful for the creditor or creditors at whose suit such debtor or debtors had been, was or were so taken or charged in execution, to take out all such execution or executions on every such judgment against the lands, tenements, hereditaments, goods, and chattels of any such debtor or debtors (other than and except the necessary wearing apparel and bedding of and for him, her, or them, and for his, her, or their family, and the necessary tools for his, her, or their trade or occupation, not exceeding the value of ten pounds in the whole;) or to bring any such action or actions on any such judgment against such debtor or debtors respectively, or to bring any such action or use any such remedy for the recovery and satisfaction of his, her, or their demand, against any other person or persons liable to satisfy the same, in such and the same manner, but in such and the same manner only as such creditor or creditors otherwise could or might have done in case such debtor or debtors had never been taken or charged in execution upon such judgment; Provided always, That no debtor or debtors who shall be duly discharged in pursuance of this Act, shall at any time afterwards be taken or charged in execution upon any judgment herein so as before declared to continue and remain in full force, nor be arrested in any action to be brought on any such judgment, and that no proceeding whatsoever by *scire facias*, action, or otherwise, shall be maintained or had against the bail in any action upon the judgment, wherein the defendant or defendants shall have been charged in execution, and afterwards discharged by virtue of the provisions of this Act.

No. XXXVIII. 48 Geo. III. c. 123.

Except necessaries.

But such debtors shall not be arrested in any action on such judgment, &c.

II. And be it further enacted by the authority aforesaid, That this Act shall not extend or be construed to extend to those parts of the United Kingdom of *Great Britain* and *Ireland*, which are commonly called *Ireland* and *Scotland*.

Act not extended to Ireland or Scotland.

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## [ No. XXXIX. ] 49 George III. c. 6.—An Act for the relief of Prisoners in custody for non-payment of money pursuant to orders of courts of equity.—[13th *March*, 1809.]

[See *post*. Title *Courts of Equity*.]

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## [ No. XL. ] 51 George III. c. 124.—An Act further to extend and render more effectual certain provisions of an Act passed in the twelfth year of the reign of his late Majesty King *George* the First, intituled "An Act to prevent frivolous and vexatious Arrests;" and of an Act passed in the fifth year of the reign of his Majesty King *George* the Second, to explain, amend, and render more effectual the said former Act; and of two Acts passed in the nineteenth and forty-third years of the reign of his present Majesty, extending the provisions of the said former Acts.—[2d *July*, 1811.]

WHEREAS by an Act made in the twelfth year of the reign of his late Majesty King *George* the First, intituled, "An Act to prevent frivolous and vexatious arrests," it was, amongst other things, enacted, That from and after the twenty-fourth day of *June*, One thousand seven hundred and twenty-six, no persons should be held to special bail upon any process issuing out of any superior court, where the cause of action should not amount to the sum of ten pounds or upwards, nor out of any inferior court where the cause of action should not amount to the sum of forty shillings or upwards; and that in all cases

51 George III. c. 124. 12 George I. c. 29. s. 1.

No. XL.
51 Geo. III. c. 124.

where the cause of action should not amount to ten pounds or upwards in any such superior court, or to forty shillings or upwards in any such inferior court, and the plaintiff or plaintiffs should proceed by way of process against the person, he, she, or they should not arrest or cause to be arrested the body of the defendant or defendants, but should serve him, her, or them personally within the jurisdiction of the court, with a copy of the process, and if such defendant or defendants should not appear at the return of the process, or within four days after such return, in such case it should be lawful for the plaintiff or plaintiffs upon affidavit being made and filed in the proper court of the personal service of such process as aforesaid (which affidavit should be filed *gratis*) to enter a common appearance or file common bail for the defendant or defendants, and to proceed thereon as if such defendant or defendants had entered his, her, or their appearance, or filed common bail; which Act was explained and amended by an Act passed in the fifth year of the reign of his Majesty King *George* the Second, intituled, "An Act to explain, amend, and render more effectual an Act made in the twelfth year of the reign of his late Majesty King *George* the First, intituled 'An Act to prevent frivolous and vexatious Arrests,'": And whereas by the said Act made in the fifth year of the reign of his said late Majesty King *George* the Second, it was enacted, that where the cause of action should not amount to ten pounds or upwards in any superior court, or to forty shillings or upwards in any inferior court, no special writ or writs, nor any process specially therein expressing the cause or causes of action, should be sued forth or issued from any such superior or inferior court to compel any person or persons to appear thereon in such court or courts; and all proceedings and judgments on any such writ are thereby declared to be void and of none effect: And whereas the said several Acts being temporary, the same were afterwards made perpetual by an Act passed in the twentieth (1) year of the reign of his said late Majesty King *George* the Second; And whereas by an Act passed in the nineteenth year of the reign of his present Majesty, intituled, 'An Act for extending the provisions of an Act made in the twelfth year of the reign of King *George* the First, intituled, "An Act to prevent frivolous and vexatious Arrests, and for other purposes;'" it was enacted That from and after the first day of *July* One thousand seven hundred and seventy-nine, no person should be arrested or held to special bail upon any process issuing out of any inferior court, where the cause of action should not amount to the sum of ten pounds or upwards; but that the like copies of process should be served, and the like proceedings had thereupon in such inferior court, in all cases where the cause of action should not amount to ten pounds or upwards, as are directed to be had by the said Act of the twelfth year of the reign of King *George* the First, in such inferior court, where the cause of action should not amount to the sum of forty shillings; any law or usage to the contrary notwithstanding; and further provisions were made touching proceedings in such inferior courts, in conformity to the provisions in the said former Act; and so much of any Act or Acts of Parliament passed for the recovery of debts within any districts and jurisdictions, as authorized arrest and imprisonment of defendants where the cause of action should amount to less than ten pounds, was thereby repealed; and further provisions were made touching actions in inferior courts, where the cause of action should not amount to ten pounds: And whereas by an Act passed in the forty-third year of his Majesty's reign, intituled, "An Act for the more effectual prevention of frivolous and vexatious arrests and suits; and to authorize the levying of poundage upon executions in certain cases," it was enacted, that, from and after the first day of *June* One thousand eight hundred and three, no person should be arrested or held to special bail upon any process issuing out of any court within those parts of the United Kingdom of *Great Britain* and *Ireland*

5 George II. c. 27.

Sect. 5.

21 George II. c. 3.

19 George III. c. 70.

Sect. 1.

Sect. 3.

43 George III. c. 46. s. 1.

(1) The twenty-first: but the original Act is so.

No. XL. 51 Geo. III. c. 124.

called *England* and *Ireland*, for a cause of action not originally amounting to such sum for which such person was by the laws then in being liable to be arrested and held to bail, over and above and exclusive of any costs, charges and expenses that may have been incurred, recovered or become chargeable in or about the suing for or recovering the same, or any part thereof: And whereas it is expedient to extend and render more effectual the provisions of the said recited Acts: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *November*, One thousand eight hundred and eleven, no person shall be held to special bail upon any process issuing out of any court where the cause of action shall not have originally amounted to the sum of fifteen pounds or upwards, over and above and exclusive of any costs, charges and expenses that may have been incurred, recovered or become chargeable, in or about the suing for or recovering the same, or any part thereof, (except where the cause of such action shall arise or be maintainable upon or by virtue of any bill or bills of exchange, promissory note or promissory notes, in which cases the parties liable thereupon may be held to special bail in such manner as if this Act had not been made;) and that in all cases where the cause of action shall not amount to fifteen pounds or upwards, exclusive of such costs, charges and expenses as aforesaid, (except as hereinbefore is excepted) and the plaintiff or plaintiffs shall proceed by the way of process against the person, he, she, or they shall not arrest, or cause to be arrested, the body of the defendant or defendants, (1) but shall serve him, her, or them personally within the jurisdiction of the court, with a copy of the process and proceedings thereupon, in such manner as by the said Act of the twelfth year of the reign of his late Majesty King *George* the First, is provided in cases where the cause of action shall not amount to ten pounds or upwards in any superior court, or to forty shillings or upwards in any inferior court; and that where the cause of action in any court shall not amount to the sum of fifteen pounds, exclusive of such costs, charges, and expenses as aforesaid, (except as hereinbefore is excepted) no special writ (2) or writs, nor any process specially therein expressing the cause or causes of action, shall, from and after the said first day of *November*, be sued forth or issued from any court, in order to compel any person or persons to appear thereon in such court; and all proceedings and judgments that shall, from and after the said first day of *November*, be had on any such writ or process, shall be, and are hereby declared to be void and of no effect. (3)

No person held to special bail where cause of action under 15*l.* (exception) Defendant not to be arrested.

No special writ sued forth to compel appearance.

Proceedings on such writ or process void.

'II. And whereas the provisions in the said Acts authorizing plaintiffs 'in default of appearance of defendants to enter a common appearance 'or file common bail as therein directed, are not deemed to extend to 'proceedings by original and other writs, whereupon no *capias* is issued, 'and it is expedient to extend the provisions of the said former Acts to 'such proceedings;' Be it further enacted by the authority aforesaid,

No distringas to issue for default of appearance: defendant served personally.

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(1) If a defendant be holden to bail on an affidavit for 17*l.*, out of which 6*l.* 10*s.* have been paid, the Court will not set aside the proceedings under the 51 Geo. III. c. 124. s. 1.: but his remedy, if any, would be under the 43 Geo. III. c. 46., for having been maliciously holden to bail; Spink *v.* Hitchcock, 1 Moore, 131.

(2) A bailable writ is not necessarily a special writ within the 51 Geo. III. c. 124., and therefore a plea stating that plaintiff commenced his action by a bailable writ indorsed for bail for 60*l.*, by virtue of which defendant was arrested, and that plaintiff's true cause of action did not amount to 15*l.*, or to any sum for which defendant was liable to be arrested; was held bad on general demurrer for not shewing the writ to be a special writ. Ball *v.* Swan, 1 Barn. & Ald. 393.

(3) The statute 51 Geo. III. c. 124. s. 1. does not avoid the plaintiff's proceedings and judgment by reason of his arresting for a sum exceeding 15*l.*, and recovering a less sum than 15*l.*; Spink *v.* Hitchcock, 7 Taunt. 435. S. C. 1 Moore, 131. N. B. How a writ must be pleaded within this statute, see Ball *v.* Swan, 1 B. & A. 393.

No. XL. 51 Geo. III. c. 124.

that in all cases where the plaintiff or plaintiffs shall proceed by original or other writ and summons, or attachment therupon, (1) in any action against any person or persons not having privilege of Parliament, no writ of *distringas* shall issue for default of appearance, (2) but the defendant or defendants shall be served personally with the summons or attachment, at the foot of which shall be written a notice informing the defendant or defendants of the intent and meaning of such service, to the effect following:

Form of notice where defendant cannot be personally served.

'C. D. [*naming the defendant*] You are served with this process at the 'suit of A. B. [*naming the plaintiff or plaintiffs*] to the intent that you 'may appear by your attorney in his Majesty's Court of at '*Westminster*, at the return hereof, being the Day of 'in order to your defence in this action: And take notice, that in de'fault of your appearance, the said A. B. will cause an appearance to 'be entered for you, and proceed thereon as if you had yourself ap'peared by your attorney.'

In what case distringas issued.

But in case it shall be made appear to the satisfaction of the Court, or, in the vacation, of any Judge of the Court, from which such process shall issue, or into which the same shall be returnable, that the defendant or defendants could not be personally served with such summons or attachment, and that such process had been duly executed at the dwelling-house or place of abode of such defendant or defendants, that then it shall and may be lawful for the plaintiff or plaintiffs by leave of the court (3) or order of such judge as aforesaid, to sue out a writ of *distringas* to compel the appearance of such defendant or defendants; and that at the time of the execution of such writ of *distringas* there shall be served on the defendant or defendants by the officer executing such writ, if he, she, or they can then be met with; and if he, she, or they cannot then be met with, there shall be left at his, her, or their dwelling-

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(1) Q. Whether the Act extends to replevin? vide Topping *v.* Fuge, 5 Taunt. 771.

(2) In Moore *v.* Taylor, 5 Taunt. 71, the Court of Common Pleas were clear that this Act did not extend to Counties Palatine, and threw out doubts that it did not even extend to the Court of Exchequer; but by a note of the reporter it appears, that that court has adopted the opposite construction.—I cannot discover on what ground the construction of the Act, as having a limited operation, is founded, the words being perfectly general; and, from my own observation and experience, I am satisfied that there is no subject to which the provisions of the Act could be applied with more beneficial effect, than the execution of process upon writs of justicies in counties palatine.—Where a defendant is abroad, a plaintiff may still (since the 51 Geo. III. c. 124.) issue a *distringas* on service of the *venire facias* for the purpose of compelling his appearance thereby, as he might have done before that Act; but not for the purpose of enabling the plaintiff to enter an appearance for him, so that he may proceed thereon to final judgment, as if the defendant himself had appeared; Nicholson *v.* Bownass, 3 Price, 263. S. P. Dwerryhouse *v.* Graham, 3 Price, 263.

(3) This provision does not apply to a case where the defendant has been actually served; as in that case the plaintiff may proceed and enter an appearance; Anon. 1 Marshall, 268 (n). The affidavit for obtaining a *distringas* must state a belief, that the defendant has absconded, with the grounds of such belief; Down *v.* Crewe, 1 Marshall, 267; and leave to issue a *distringas* will not be granted upon affidavit that the defendant was out of the kingdom, and therefore could not be served with process; Jordan *v.* Bell, 1 Marshall, 292.

The statute 43 George III. c. 53, which applies to Ireland the general provisions of stat. 12 Geo. I. c. 29. supra, provides, that wherever it appears to the Court out of which process issues that all due diligence has been used to have the process of the Court personally served, yet, that under the special circumstances of the case appearing to the Court by affidavit that it was impossible to procure personal service, it should be lawful for the Court to substitute such other kind of service as to them should seem fit. 2 Gabbett, 200.

As the period of the continuance of the present Act is so very short, the subject of it must of course be brought under the consideration of the legislature; and, I apprehend, that such a general provision as has been last noticed would be very desirable; that it should be extended to all superior Courts, and the case where process could not be served on account of the defendant being abroad, should be expressly included. It might be fairly confided to the justice of the courts to adopt such regulations as would prevent defendants from being injured by a proceeding of which they had not a sufficient opportunity of being apprized.

house or other place where such *distringas* shall be executed, a written notice in the following form:

No. XL. 51 Geo. III. c. 124.

Notice.

'IN the Court of [*specifying the court in which the suit shall be depending*] between A. B. plaintiff, and C. D. defendant, [*naming the parties.*] Take notice that I have this day distrained upon your goods and chattels for the sum of forty shillings, in consequence of your not having appeared by your attorney in the said Court, at the return of a writ of returnable there on the day of and that in default of your appearing to the present writ of *distringas* at the return thereof, being the day of the said A. B. will cause an appearance to be entered for you, and proceed thereon as if you had yourself appeared by your attorney.

'E. F.'

[*The name of the sheriff's officer.*]

'To C. D. the above named defendant.'

When the defendant does not appear, plaintiff may proceed.

And if such defendant or defendants shall not appear at the return of such original or other writ, or of such *distringas*, as the case may be, or within eight days after the return thereof, in such case it shall and may be lawful to and for the plaintiff or plaintiffs, upon affidavit being made and filed in the proper court of the personal service of such summons or attachment, and notice written on the foot thereof as aforesaid, or of the due execution of such *distringas*, and of the service of such notice as is hereby directed on the execution of such *distringas*, as the case may be, to enter a common appearance for the defendant or defendants, and to proceed thereon as if such defendant or defendants had entered his, her, or their appearance; any law or usage to the contrary notwithstanding; and that such affidavit or affidavits may be made before any judge or commissioner of the court out of or into which such writ shall issue or be returnable, authorised to take affidavits in such court, or else before the proper officer for entering common appearances in such court, or his lawful deputy, and which affidavit is hereby directed to be filed *gratis*.

19 George III. c. 70. respecting actions for sums less than 10*l.* extended to sums under 15*l.*

III. And be it further enacted, That all and every the provisions contained in the said Act of the nineteenth year of the reign of his present Majesty, respecting actions in inferior courts, where the cause of action should amount to less than ten pounds, shall be and the same are hereby from and after the said first day of *November*, extended to all actions in such courts where the cause of action shall not amount to fifteen pounds, exclusive of such costs, charges and expenses as aforesaid (except where the cause of such action shall arise or be maintainable upon or by virtue of any bill or bills of exchange, promissory note or promissory notes, in which case the parties liable thereupon may be held to special bail, in such manner as if this Act had not been made;) and that so much of any Act or Acts of Parliament, heretofore passed for the recovery of debts within certain districts and jurisdictions, which may have authorized the arrest and imprisonment of defendants, where the cause of action amounts to less than fifteen pounds, exclusive of such costs, charges and expenses as aforesaid, shall be and the same is hereby from and after the first day of *November*, repealed.

So much of acts authorising arrests contrary, repealed.

Proviso for Scotland and Ireland.

IV. Provided always, That nothing in this Act contained shall extend or be construed to extend to those parts of the United Kingdom called *Scotland* and *Ireland*.

Continuance.

V. Provided always, and be it enacted, That this Act shall continue and be in force until the first day of *November*, in the year One thousand eight hundred and sixteen, and thenceforth until the end of the then next session of Parliament, and no longer.

[Continued to 1st *November*, 1823, and to the end of the next session, by 57 *George* III. c. 101.]

No. XLI.
52 Geo. III.
c. 34.

[ No. XLI. ] 52 George III. c. 34.—An Act for altering and amending an Act made in the thirty-second year of the reign of his late Majesty King *George* the Second, for the relief of Debtors, with respect to the imprisonment of their persons, and of an Act made in the thirty-ninth year of his present Majesty, for making perpetual an Act made in the thirty-third year of his present Majesty, for the further relief of Debtors; and for other purposes in the said Act expressed.—[20th *April*, 1812.]

52 George III. c. 34.
39 George III. c. 50.
33 Geo. III. c. 5.
32 Geo. II. c. 28.

'WHEREAS an Act was passed in the thirty-ninth year of the reign of his present Majesty, intituled "An Act for making perpetual an Act made in the thirty-third year of the reign of his present Majesty, intituled 'An Act for the further relief of Debtors with respect to the imprisonment of their persons; and to oblige debtors who shall continue in execution in prison beyond a certain time, and for sums not exceeding what are mentioned in the Act, to make discovery of and deliver upon oath their estates for their creditors' benefit:'" And whereas in the said Act made in the thirty-third year of the reign of his present Majesty, the benefits of an Act passed in the thirty-second year of the reign of his late Majesty King *George* the Second, intituled "An Act for the relief of Debtors with respect to the imprisonment of their persons, and to oblige debtors who shall continue in execution in prison beyond a certain time, and for sums not exceeding what are mentioned in the Act, to make discovery of and deliver upon oath their estates for their creditors' benefit," were extended to divers persons not mentioned in the said Act made in the thirty-second year of his late Majesty King *George* the Second: And whereas the provisions of the said Acts made in the thirty-second year of his late Majesty and in the thirty-third year of the reign of his present Majesty respectivly require, that debtors and others confined in any county or other gaol above the space of twenty miles from *Westminster Hall*, or the court or courts under the process whereof any such debtors or others are confined, desirous to avail themselves of the benefits of the provisions of the said Act, should apply by petition to such court or courts, and authorize such court or courts, on being satisfied as therein mentioned, to order or cause such debtors or others so petitioning to be brought to the assizes which shall be holden for the county or place where he, she, or they shall be imprisoned, and further require that the matter of the said petition should at the time of the assizes held for the county or place where he, she or they shall be imprisoned, be heard by the judge of assize on the crown side: And whereas there are many gaols situate within local or particular jurisdictions, for which no assizes are ever or seldom if ever held, or at which assizes there may be no judge of assize on the crown side, and other gaols at considerable distances from any place where assizes are usually held, by reason whereof such debtors and others as are confined therein and would be entitled to the benefits of the said Acts cannot avail themselves thereof in the manner intended by the said Acts: And whereas great hardship arises to such persons therefrom, and it is desirable to give them relief in the premises; and that such court or courts, on being satisfied as aforesaid, should be further authorised to order or cause all debtors and others entitled to the benefit of the said Acts, or any of them, petitioning as aforesaid, to be brought up, and the matter of their petitions heard before the justices assembled at any General or quarter sessions of the peace to be holden within the distance of twenty miles of any gaol in which any such debtors or others may be confined;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present parliament assembled, and by the authority

No. XLI. 52 Geo. III. c. 34.

of the same, That, from and after the passing of this Act, it shall and may be lawful for such court or courts to order such debtors and others to be brought up before any justices of the peace assembled at any general or quarter sessions of the peace which shall be mentioned in any petition of any such debtors or others to be holden for any county, city, liberty, franchise or jurisdiction within the distance of twenty miles of the gaol wherein such debtors or others so petitioning shall be confined, instead of ordering such debtors or others to be brought up before a judge of assizes in all cases where such court or courts shall think proper so to do, and such general or quarter sessions of the peace shall be holden either nearer in point of distance from such gaol or of time than the assizes at which such judge of assize would be present would be holden; and the justices so assembled in general or quarter sessions before whom any such debtors or others shall be brought in pursuance of any such order, are required to hear and determine the matter of such petition, and do and perform all other such matters and things to the same effect and in the same manner, as near as may be, as by the said recited Act of the thirty-second year of his late Majesty King *George* the Second, the judge of assize on the crown side is required to do and perform; and all orders made by such justices shall be as valid and effectual as if the same had been made in the court or courts out of which process against such debtors or others had issued, and the same shall be made records of such general or quarter sessions, and copies thereof shall from thence be transmitted signed by the person presiding at such general or quarter sessions to the court or courts out of which process had issued against such debtors or others, to be a record of such court or courts, and kept among the records thereof; and all enactments, provisions, directions, powers, authorities, pains, penalties, liabilities, benefits, advantages and protections or indemnities in the said Acts or either of them contained, applicable to any matter or thing to be done before any judge of assize or by any person in obedience to any order made, the authority of the said Acts or either of them, or otherwise under or in pursuance of any provisions in the said Acts or either of them contained, shall be and the same are hereby declared respectively to extend to and comprehend and be applicable to all like matters and things by this Act authorized to be done before any such justices so assembled in such general or quarter sessions, or by any person in obedience to any order or orders made under the authority of this Act or otherwise, under or in pursuance of any provision thereof, or authorized to be done by virtue thereof, in as full and ample a manner as if all and every the clauses and provisions in the said recited Acts or either of them contained, touching every matter and thing which might be done under the said recited Acts or either of them, had been fully and distinctly re-enacted and set forth in this Act, with apt words to make them part of and applicable to this Act.

Debtors may be brought before justices at general sessions, instead of a judge of assize, &c.

Provisions of recited Acts extended to this Act.

'II. And whereas by an Act passed in the thirty-second year of the 'reign of King *George* the Second, intituled, "An Act for the Relief 'of Debtors with respect to the Imprisonment of their Persons, and to 'oblige Debtors who shall continue in execution in Prison beyond a 'certain Time, and for Sums not exceeding what are mentioned in the 'Act, to make Discovery of and deliver upon Oath their Estates for 'their Creditors' Benefit;" it is, amongst other things, provided, That 'no person or persons who had then taken or should thereafter take 'the benefit of any act for the relief of insolvent debtors, should have 'or receive any benefit or advantage of or under this Act, or be 'deemed to be within the meaning thereof, so as to gain any discharge, 'unless compelled by any creditor to discover and deliver up his or her 'estate and effects: And whereas it is expedient that the said recited 'provisions in the said Act should be repealed;' Be it enacted by the authority aforesaid, That the same shall be and is hereby repealed.

32 George II. c. 28. s. 24.

repealed.

No. XLII. 53 Geo. III. c. 102.

[ No. XLII. ] 53 George III. c. 102.—An Act for the Relief of Insolvent Debtors in *England*.—[10*th July* 1813.*]

'WHEREAS, notwithstanding the occasional Acts which have from time to time passed for the relief of insolvent debtors, and the discharge of many prisoners for small debts by charitable donations,

* Few statutes which have passed in modern times have produced so general and extensive a change in the system of the law as the present. The effect of it has been much complained of by the mercantile classes of society; and although the duration of the measure is but temporary, and without an express renewal it will expire in three years, it is probable that it may not be allowed even that limited duration, and that before this collection is offered to the public, the law may have been restored to its ancient course.

It is, however, observable, that many of those whose opinions are most directly opposite upon other matters of legislation, and who mutually impute to each other a spirit of wanton innovation, or of unreasonable tenacity of ancient usages, have concurred in supporting this measure, as being essentially conducive to the interests of humanity.

That true policy and true humanity must necessarily coincide in every judicial establishment, is an opinion admitted by all who have directed their attention to general enquiries respecting legal polity; and it is evident that they must be united in that system which, in the full measure of its results, is attended with the greatest portion of practical utility. but it is in many cases impossible to adopt a system which is beneficial with reference to the whole sphere of its operation, but free from great and serious objections in many instances of its immediate application: and such must evidently be the case, with respect to the adoption or rejection of the law of imprisonment for debt, or to any modification or extension of that system which may render it nugatory by excess of lenity, or oppressive by excess of rigour

To confide to a disappointed creditor the right of incarcerating for a considerable length of time an unfortunate debtor, who has entered into his engagements with a full prospect and intention of performing them, and has used every exertion in his power to do so, must, when considered alone, excite a sentiment of reproach towards the law which is open to such an imputation but to establish a system which will prevent the contracting engagements, the performance whereof depends upon the hazards of speculation, and excite a due exertion for the discharge of obligations that would otherwise be disregarded, is essential to the maintenance of civil society; and it probably will be found, upon examination, that the advantage can only be effectually obtained at the price of the inconvenience; and that a minute and accurate distinction between the respective cases, founded upon just and equitable principles, is beyond the reach of judicial enquiry. The true object of legislation on the subject is, therefore, to adopt that system which will be attended with the smallest degree of detriment and inconvenience upon the whole; and it must never be overlooked, that the misery occasioned by the non-performance of engagements may be in its nature equally great and severe with that of the coercion which is permitted as the alternative. Supposing the disadvantages on the one side and the other to be nearly balanced, I am ready to admit, that the choice should be against the adoption of a system which would subject to a length of imprisonment a party willing to apply all his apparent resources in satisfaction of his engagements: but I conceive the real balance of general advantage to be considerably on the opposite side. In this instance, as in the general operation of penal law, the evil which arises is direct and obvious: the great and essential benefit arises from the silent and unperceived operation of the law, in inducing a compliance with its precepts, from an apprehension of the consequences resulting from their infraction: and without calling in aid of the argument the sentiment of humanity, the inducements to form rash and fraudulent engagements, or to recede from the performance of engagements attended with detriment and inconvenience, are much stronger, and operate to an infinitely greater extent, than those which, in the mere indulgence of a feeling of disappointment and revenge, would lead to the incurring a considerable expense for the purpose of inflicting unmerited misery upon real misfortune. The testimony which has been repeatedly given by those holding the highest stations in the law, that upon the agitation of bills of insolvency, they have received innumerable applications from fraudulent debtors, compared with the number of those from harsh and rigorous creditors, affords a strong confirmation of the reasoning, that the coercion which results from an apprehension of imprisonment is much more extensively an instrument of justice than an engine of oppression.

The delay, the expense, and the uncertainty of ultimate satisfaction, are strong considerations with a prudent creditor, to accept from his debtor such satisfaction as is within the reach of his ability; while the terror of that delay and expense, the threats of exhausting the means of present satisfaction, and of rendering any adverse proceedings nugatory and unavailing to the purposes of satisfaction—afford to the fraudulent debtor the ready means of defiance and offence; and with reference to

'great numbers of persons generally remain confined for debt in different prisons in *England*; and it is therefore expedient to make a permanent provision for the relief of insolvent debtors in *England*, under certain restrictions:' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this

No. XLII. 53 Geo. III. c. 102.

the Act at present under consideration, it is said to be a common taunt from a debtor to his creditor, to offer him a bill at three months upon the Noble Lord with whom it originated.

The great increase of imprisonment which usually takes place upon the expectation of occasional acts of bankruptcy, and which has existed during the operation of the present Act, must manifestly arise from the contrivance of the debtors themselves; as the expectation of relief by the creditors under such circumstances will of course be weaker than under the common operation of the pre-existing law; and with respect therefore to all the additional numbers, the law becomes—not, as it should be, a shield from oppression, but a weapon of offence.

Without alluding to the impression of the general body of commercial persons, as to the impolicy of the subsisting law, I believe it may be stated as an unquestionable fact, that, although the number of imprisonments has greatly increased, the number of suits for the recovery of debts has diminished in an almost incredible degree. The diminution of legal proceedings will by many be considered as no unfavourable symptom of the advantage of the law by which it is occasioned; but there is all the difference of excellence and defect between a law which has the effect of diminishing litigation by rendering it unnecessary, and producing without effort those advantages which it is the object of litigation to obtain, and a law which occasions the relinquishment of proceedings before resorted to in the expectation of justice and redress, from a conviction, not merely of their inutility and inefficacy, but of their producing an augmentation of the loss which they are intended to avert.

I do not dwell upon the regulations contained in this and other Acts of insolvency, for the benefit of the creditor, with respect to either present or future property. It is perfectly notorious that the practical benefit arising from these regulations is very limited indeed. At the time of my writing, an inquiry is directed in Parliament to bring the question to a test; but I have a strong impression that the satisfaction which is so obtained will amount to less than a farthing in the pound upon the aggregate of the debts from which, by the operation of the Acts, there is a personal discharge. [The result of the enquiry has not appeared at the time of committing this sheet to the press, but according to statements which have been made in Parliament, my computation is above fourfold more favourable than the truth.]

Unfavourable, however, as my impressions are of the consequences resulting from the system which has been established, I am not an advocate for its sudden relinquishment. I am inclined to think that the permitting its existence until the period already fixed for its expiration, will have the effect of affording a fair and reasonable trial of its real character; and perhaps the objections which have been referred to may be then obviated by an extension of the term of imprisonment; and a system which is injurious by restricting the imprisonment to three months, may probably be rendered beneficial by extending that period to a year; a measure, the adoption of which for such a length of time as would afford an adequate opportunity to judge of its effects, would, I conceive, be preferable to an immediate and total relinquishment of the system in the first instance.

Before concluding this note I will add, that, although unfriendly to the measure which has occasioned it, I should feel much pleasure from a regulation which would enable a debtor, by the assent of a considerable portion of his creditors, to place his effects under proper management for their benefit, without the necessity of a previous imprisonment, or the difficulties and embarrassments which attend the present system of the bankrupt law; a subject on which I have already stated my sentiments to the public; and which I shall probably have again occasion to advert to in the course of the present Volume.

I also think it not wholly unimportant to express a doubt of the propriety of introducing exceptions in acts of insolvency; with regard to damages recovered in particular kinds of actions; as such an exception rather tends to confound the proper limits between criminal and civil proceedings, and imposes, in an indirect course of punishment, an imprisonment of much greater duration than is usual in cases of the direct and immediate application of the criminal law.

I conceive that a provision against any defendant being liberated in respect of the costs of a cause which has been brought to trial, unless the judge before whom the cause was tried should certify that there was a reasonable ground of defence, would be a very material relief to creditors; and that it would be eligible to give the court to which the application was made, a discretion to withhold the discharge in respect of costs upon cases not brought to trial, when there appeared to have been any sham pleading or writ of error for delay, or any other proceeding whereby the expense of the plaintiff had been unnecessarily increased.

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c. 102.

Commissioner appointed by his Majesty to preside in a court, to be called "The Court for Relief of insolvent Debtors."

Prisoners in custody for three months to apply to such court by petition.

Act, it shall be lawful for his Majesty to appoint a fit person, being a barrister at law, of six years' standing at the least, to be his Majesty's Commissioner for the relief of insolvent debtors, and to preside in a court to be called "The Court for Relief of Insolvent Debtors," which shall be a court of record for the purposes of this Act; and that when and as soon as the appointment shall have been notified in the *London Gazette*, such court shall be deemed to be fully constituted and established: and thereupon it shall be lawful for every person who shall be a prisoner in any prison in that part of the United Kingdom called *England*, upon any process whatsoever issuing from any court whatsoever, for or by reason of any debt, damage, costs, sum or sums of money, or contempt for non-payment of money, and who shall have been in actual custody upon some process for some or one of the said debts or demands during the space of three calendar months or more, to apply by petition in a summary way to the court to be established by virtue of this Act, for his or her discharge from such confinement, according to the provisions of this Act; and in such petition such prisoner shall state the prison wherein such prisoner shall be then confined, the time when such prisoner was first charged in custody, or received in prison upon some process on which he or she shall then be detained in prison, together with the name or names of the person or persons at whose suit or prosecution such prisoner shall, at the time of presenting such petition, be detained in prison, and the amount of the debts or sums of money for which such prisoner shall be so detained, and shall pray to be discharged from custody upon all such process, and to have future liberty of his or her person against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be named or specified as creditors, or as claiming to be creditors of such prisoner in the schedule annexed to such petition, and such prisoner shall by such petition offer to convey, assign, and deliver to such person or persons as the court shall direct, for the payment of such debts and sums of money respectively, from which such prisoner shall seek to be discharged, all such property as such prisoner shall possess or have in his or her power as hereinafter expressed; the wearing apparel and bedding of such prisoner, and his or her family, and working tools and necessary implements for his or her occupation or calling, and other small necessaries, not exceeding in the whole the value of twenty pounds, only excepted; and shall also offer to engage to pay so much of all such debts and demands respectively as shall be justly due from such prisoner to such creditors, and as shall not be discharged by means of the property so to be conveyed, assigned, and delivered in case such prisoner shall, at any time thereafter, become possessed of sufficient means for such purpose; to which petition shall be annexed a schedule, containing a full and true description of all and every the person and persons to whom such prisoner shall then be indebted, or who to his or her knowledge or belief shall claim to be a creditor or creditors of such prisoner, with the nature and amount of such debts and claims respectively, distinguishing such as shall be admitted from such as shall be disputed by such prisoner; and also a full, just, true and perfect account and discovery of all the estates and effects, real and personal, in possession, reversion, remainder or expectancy, of every nature and kind whatsoever, which such prisoner, or any other person or persons in trust for such prisoner, or for his or her use, benefit or advantage, in any manner whatsoever, shall have been or shall be seized or possessed of, or interested in, or entitled unto, or which such prisoner, or any person or persons in trust for him or her, or for his or her benefit, shall have had or shall have any power to dispose of or charge for the benefit or advantage of such prisoner at the time when such prisoner was first committed to prison, or charged in custody for any of the debts or sums of money for which such prisoner shall then be detained in custody, or at any time subsequent to that time, before and on the day on which the truth of such schedule shall be sworn to by such prisoner as herein directed; toge-

Schedule of debts and effects, &c. annexed to petition

ther with a full, just, true and perfect account of all debts at such time owing to such prisoner, or to any person or persons in trust for him or her, or for his or her benefit or advantage, either solely or jointly with any other person or persons, and the names and places of abode of the several persons from whom such debt shall be or shall have been due or owing, and of the witnesses who can prove such debts as shall remain due (if any such there shall be), so far as such prisoner can set forth the same, and in what manner any such estates or effects, real or personal, of such prisoner shall have been applied or disposed of since the time when such prisoner shall have been so first committed to prison or charged in custody as aforesaid; and which of such estate or effects, or any of them, shall have been in any manner conveyed, assigned, disposed of, charged or incumbered in any manner whatsoever, and when and in what manner, and for what consideration, and to whom, and for whose benefit, and which of such estates and effects, shall at the time of swearing to such schedule, be applicable to the discharge of the demands of his or her creditors; and such schedule shall also fully and truly describe the wearing apparel and bedding of such prisoner, and his or her family, and the working tools and implements, and other small necessaries intended to be excepted by such prisoner from the assignment proposed by the said petition to be made by such prisoner as aforesaid, together with the value of such excepted articles respectively; and such prisoner shall make oath of the truth of such petition and schedule to the following effect, or with such variations, according to special circumstances, as shall be consistent with the provisions of this Act;

Form of oath of truth of petition and schedule.

'I A. B. upon my corporal oath, in the presence of Almighty God, do solemnly swear and declare, That on the day of I was really and truly a prisoner in the actual custody of in the prison or gaol of at the suit of for the sum of [*as the case may be*], without any fraud or collusion whatever; and that I have ever since been and now am a prisoner in in the actual custody of the keeper or gaoler of [*as the case may be*], or within the liberties thereof, at the suit of and of [*as the case may be*], without any fraud or collusion whatever; and that I have not taken the benefit of any Act of Parliament made for the relief of insolvent debtors within the space of five years now last past, and that I have not had at any time since I was committed to prison, or charged in custody by the said as aforesaid, any means whatsoever of discharging the demands of the said and of the other persons named or described as my creditors, or as claiming to be my creditors, in the schedule hereunto annexed, and subscribed by me, except the estates and effects mentioned in the schedule; and that I have not now any means of discharging such demands, except so much of the said estates and effects as still remain applicable for that purpose, as expressed in the said schedule; and that all the estates and effects which I have disposed of since I was so first committed to prison, or charged in custody, have been necessarily expended by me for the maintenance of myself and family, and for law charges and other unavoidable expenses during my confinement, and in payment of just debts due and owing by me before or since the said day of when I was first committed to prison or detained in custody, at the suit of the said as aforesaid; and that the said schedule doth contain, to the best of my knowledge and belief, a full, just, true and perfect account and discovery of all the estates and effects, real and personal, in possession, reversion, remainder or expectancy, and of every nature and kind soever, which I now am, or which any person or persons in trust for me, or for my use, benefit or advantage, now is or are seized, possessed of, interested in, or entitled unto, or which was or were in my possession, custody or power, or in the possession, custody or power of any such person as

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aforesaid, or which I or any person or persons had any power of disposing of or charging for my benefit or advantage at the time I was so first committed to prison, or charged in custody by the said as aforesaid, or at any time since that time, and of all debts owing to me or to any person or persons in trust for me or for my benefit, either solely or jointly with any other person or persons, and of all securities and contracts whereby any money now is or will or may hereafter become payable, or any benefit or advantage may accrue or might have accrued to me or my use, or to any person or persons in trust for me or for my benefit, at the time I was so first committed to prison, or charged in custody as aforesaid, and the names and places of abode of the several persons from whom such debts are or were due and owing, and of the witnesses who can prove such debts or contracts as remain due or unperformed, so far as I am able to set forth the same, and that neither I nor any person or persons in trust for me, or for my use and benefit, to my knowledge or belief, have or has any land, money, stock or other estate or effects whatsoever, real or personal, in possession, reversion, remainder or expectancy, or of any nature or kind whatsoever, or any power of disposing of or of charging for my benefit or advantage any property whatsoever, other than such as are in the said schedule contained or expressed, except the wearing apparel and bedding for myself and family, working tools, and the necessary implements for my occupation and calling, and other small necessaries, not exceeding in the whole the value of twenty pounds, mentioned and described in the said schedule, and intended to be excepted from the assignment intended to be made by me; and that I have not, nor hath or have any person or persons for me, directly or indirectly, sold, lessened or otherwise conveyed or disposed of in trust or otherwise, except as hereinbefore expressed, or in any manner concealed any part of my lands, money, goods, chattels, stocks, debts, securities, contracts, estates or effects, real or personal, whereby to secure the same for my own benefit, or whereby I may receive or expect to receive any profit or advantage therefrom, or with any intent to defraud or deceive any creditor or creditors to whom I am or was indebted in any wise howsoever.

'So help me GOD.'

Court, or a justice, to administer oath.

And the said oath shall and may be administered to such prisoner by such court, or by any officer of such court appointed by such court for that purpose, or by a justice of the peace for the county, riding, division or place in which such prisoner shall be detained in custody, and the said petition, and schedule and oath, shall be respectively subscribed by such prisoner in the presence of the person by whom such oath shall be administered, who shall certify the subscription thereof respectively by such prisoner; and such petition, schedule and oath shall be filed in the said court, which court shall thereupon name a day for hearing the matter of such petition; and a copy of such petition, schedule and oath shall be served on the several person or persons who shall be specified in such petition as the person or persons at whose suit such prisoner shall be then detained in custody, or on his, her or their attorney or solicitor, in the action or actions, suit or suits, in respect of which such prisoner shall be so detained, together with a copy of the order of the court upon such petition, twenty days at the least before the day appointed for hearing the matter of such petition, by delivering such copies respectively to such person or persons respectively, or leaving the same with the wife, clerk or servant of such person or persons respectively, at his, her or their usual place of abode; and notices in writing that such petition had been presented, and such schedule and oath filed in the said court, together with a copy of the order on such petition, shall be served in like manner on all and every the person or persons named or described in the said schedule as creditors, or as claiming to be creditors of the said prisoner, and against whose demands such prisoner shall seek to be

Copy of petition, schedule, and oath, delivered to every creditor.

discharged, or on the attorney or solicitor of any creditor, in any action or suit brought against such prisoner for the demand of such creditor; and such service shall, on the hearing of the matter of the said petition, be proved on oath to the satisfaction of the court.

If creditors numerous, notice inserted in London Gazette, and in two or more newspapers, as court shall direct.

II. Provided always, and be it further enacted, That in case it shall be made appear to the satisfaction of the said court, that the creditors of such prisoners, exclusive of those at whose suit such prisoner shall be then detained in custody, are so numerous, or their residence so remote, that the expense of serving such creditors with notice of the application of such prisoner for his or her discharge, would be so considerable that such prisoner might be unable to procure such service, to be duly made in manner hereinbefore directed, or that for any other reason it will be fit, in the judgment of the said court, to dispense with such service, with respect to all or any of such creditors, it shall be lawful for the said court to order that notice of the petition of such prisoner for his or her discharge may, instead of being served on such creditors respectively, be inserted in the *London Gazette*, and in such two or more newspapers as the said court shall direct, and in such form of words as the said court shall approve, twenty days at the least before the day appointed for hearing the matter of the said petition, and that such notice shall be deemed sufficient notice to the creditors named or described therein; or to substitute some other mode of notice, which in the judgment of the said court may appear reasonable; and upon such notice so given to the satisfaction of the said court, it shall be lawful for the said court to proceed on such petition with respect to all such creditors as shall be named or described in such notice, in the same manner as the said court might have done if such creditors had been respectively served with notice as hereinbefore directed.

Insertion of advertisement 3*s*.

III. Provided always, and be it hereby enacted, That the sum of three shillings and no more shall be paid to any printer or proprietor of any newspaper for the insertion of any such advertisement aforesaid; and all printers and proprietors of newspapers are hereby required to insert the same on the payment of the said sum of three shillings for the insertion thereof; and that no such advertisement shall be liable to the payment of, or be chargeable or charged with the payment of any stamp or other duty whatsoever.

Stamp duty.

Court may proceed where notice not given in London Gazette, &c. if creditors cannot be found.

IV. Provided always, and be it enacted, That in case it shall be made appear to the satisfaction of the said court, that any of the persons required to be served with such petition, schedule, oath, order or notice, is or are beyond the seas, or cannot be found, so as to be served with such petition, schedule, oath and order, as required by this Act, and the said court shall not think fit to order notice to such persons to be inserted in the *London Gazette* and such newspapers as aforesaid, or to substitute any other mode of notice, it shall be lawful for the said court to proceed upon the said petition notwithstanding such defect in the service thereof; but in such case such prisoner shall not be in any manner discharged from the demands of the person or persons who shall not be so served, or with respect to whom such notice shall not be given in the *London Gazette* and such newspapers as aforesaid, or in such other substituted mode of notice as shall be approved of by the said court, unless such person or persons shall appear before the said court and oppose the discharge of such prisoner, or consent to the proceeding of the court, notwithstanding any such defect of service.

Previous residence out of the kingdom.

V. Provided always, and be it further enacted, That if any prisoner seeking the benefit of this Act shall within two years before he or she shall seek the benefit of this Act, have resided in any place or places out of the united kingdom, and shall during such residence have contracted in such place or places any debt from which he or she shall seek to be discharged by virtue of this Act, such prisoner shall not be discharged under the authority of this Act from any such debt, without the consent of the person or persons to whom such debt shall be due, unless such prisoner shall at the time of such application be in actual custody for such debt, or shall be actually sued, or shall have been sued in some court of law or equity in *England* for the same; in any of

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which cases notice of the application for the discharge of such prisoner shall be given to the creditor or creditors so detaining in custody or suing or having sued such prisoner, or to the attorney or solicitor employed in the action or suit then depending for such debt or debts, or to the attorney or solicitor employed in any suit for such debt or debts before instituted but not depending, if the court to be established by virtue of this Act shall think fit to allow of service on such attorney or solicitor, instead of personal service on such creditor or creditors.

Hearing of petitions may be deferred in case of defect of service.

VI. Provided also, and be it further enacted, That in case of any defect in the service of such petition, schedule, oath or order, it shall be lawful for the said court from time to time to allow further time for such purpose, and to make an order or orders for adjourning the hearing of the matter of the said petition, in the whole or with respect to any particular person or persons, to give opportunity for such service; and in case the said petition, schedule, oath and original order, togethe with such further order or orders, shall be duly served according to the provisions of this Act, on the person or persons not before duly served twenty days before the day appointed for hearing the matter of the said petition on any such further order, it shall be lawful for the said court to proceed on such service, as the said court might have done if the said petition, schedule, oath and original order, had been duly served according to the provisions before contained in this Act.

On hearing petition creditors may oppose.

VII. And be it further enacted, That upon the day appointed by the said court for hearing the matter of the said petition, or upon such subsequent day as the said court shall appoint for such purpose, the said court shall cause such prisoner to be brought before the said court, or before such person or persons as the said court shall direct, according to the provisions of this Act, to be examined touching the truth of the matter contained in the said petition and schedule; and any of the creditors of such prisoner, and any of the persons named or described in such schedule, as claiming to be creditors of any such prisoner, and any person or persons not named or described in such schedule, who shall claim to be a creditor or creditors of such prisoner, shall be at liberty to oppose such petition, and for that purpose to put such questions to such prisoner as the said court shall think fit, touching the matters contained in such petition and schedule, and touching such other matters as the said court shall be of opinion it may be fit and proper that such questions should be put for the due execution of this Act, and such prisoner shall answer all such questions upon oath; and in case such prisoner shall not so answer all such questions to the satisfaction of the said court, or in case it shall be made appear to the satisfaction of the said court, from such answers as shall be given by such prisoner or by evidence, that such prisoner is not entitled to the benefit of this Act, then and in such case such court shall so declare, and shall remand such prisoner to custody: Provided always, that in case such court shall entertain any doubt touching any matter alleged against such prisoner to prevent his or her discharge, or touching the examination of such prisoner, it shall be lawful for such court to remand such prisoner to custody, and afterwards to cause such prisoner to be again brought up for examination as often as to such court shall seem fit.

Court, if not satisfied, may remand prisoner.

Court may order prisoners to be examined by justices, either in session or out of session, &c. of which notice shall be given.

VIII. Provided always, and be it further enacted, That in case the said court shall see fit, it shall be lawful for the said court to order that any prisoner, instead of being brought before the said court for examination, for any of the purposes of this Act, shall from time to time be examined on oath as occasion shall require, touching any matters for the purposes of this Act, by one or more of his Majesty's justices of the peace for the county, riding, division or place, within or near to which such prisoner shall be detained in custody, either at a general session of the peace, or any adjournment thereof, or out of session, who are hereby respectively empowered and required to take such examination pursuant to such order; and such notice shall be given of the time and place to be appointed for such examination as the said

court to be established by virtue of this Act, shall direct; and such prisoner shall, according to such order, be carried before the person or persons appointed thereby to examine such prisoner, for which such order shall be a sufficient warrant; and such prisoner shall answer upon oath all such questions as shall be put to such prisoner pursuant to such order; and the person or persons taking such examination shall certify to such court the examination of such prisoner, and all matters relating thereto, as such court shall direct; and such court shall proceed upon such certificate in such manner as to such court shall seem just; and such examination or certificate, or either of them, shall not be liable to or charged with any stamp duty or duties whatsoever; and the clerk of the peace or other officer of such sessions, or the clerk of such justice or justices, shall be paid for every such examination after the rate of fourpence for every folio, for taking and swearing or affirming the same; and the further sum of twopence for every folio for such certificate, and procuring the signature of the justices thereto, and fair copy of such examination to return with such certificate, and no more; and each of such folio shall contain not less than seventy-two words.

Certificate.

Stamp Duty.

Fees.

IX. And be it further enacted, That in case any person or persons claiming to be a creditor or creditors of any prisoner, shall oppose the petition of such prisoner for his or her discharge, such person or persons, although not duly served with such petition, schedule, oath or order as aforesaid, shall be considered as having had due notice thereof, and the name or names of such person or persons shall be added to the said schedule by the said court, either as a creditor or creditors, or as claiming to be a creditor or creditors of such prisoner.

Claiming to be creditors not duly served with notice, to be added to schedule.

X. And be it further enacted, That in case the said court shall be of opinion that such prisoner is entitled to the benefit of this Act, then and in such case the said court shall so order and adjudge, and shall in such order specify the several creditors and persons claiming to be creditors of such prisoner, who shall appear to have been duly served with notice of such proceedings, as required by this Act, or with respect to whom notice shall appear to have been given in the *London Gazette* and other newspapers, in pursuance of the order of the said court for that purpose, or in such other manner as the said court shall direct, or who shall have appeared before the said court, and opposed the discharge of such prisoner, or consented to the proceeding of the court with respect to their demands, notwithstanding any defect of service of such notice: and the said court shall in such order also specify the several persons against whose demands such prisoner shall be deemed by such court entitled to be discharged by virtue of this Act; and such court shall appoint a proper person or proper persons to be assignee or assignees of the estate and effects of such prisoner, for the purposes of this Act, and shall order proper conveyances and assignments of such estate and effects to be made by such prisoner according to this Act, together with an engagement to be executed by such prisoner to pay so much of the just debts and demands of the several persons against whom such prisoner shall by such court be adjudged entitled to the benefit of this Act, as shall not be paid out of the estate and effects to be conveyed and assigned by such prisoner for such purpose, in case he or she shall at any time thereafter be enabled to pay such debts and demands, or to pay such part or parts thereof as he or she shall be able at any time to pay; and shall also order all books, papers and writings, in the custody or power of such prisoner, relating to the estate and effects of such prisoner, and the demands of his or her creditors, to be delivered on oath to such assignee or assignees, or otherwise to be disposed of as such court shall direct; and upon the due execution of all such conveyances, assignments and engagements as aforesaid, and delivery of such books, papers and writings as aforesaid, as such court shall direct, such court shall order such prisoner to be discharged from custody, and judgment shall thereupon be entered in such court against such prisoner in pursuance

Court so to adjudge where they are of opinion prisoners are entitled to benefit of Act, &c.

Assignees appointed and engagements entered into for payment of debts not satisfied.

Books, &c. of prisoner delivered up.

Prisoner discharged, but judgment entered against future estate.

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of such engagements as aforesaid, (1) which judgment shall and may, if the said court shall so order, be executed against the future estate and effects of such prisoner, real and personal, as the said court shall direct, and shall bind the assets of such prisoner, real and personal, in the hands of his heirs, executors and administrators, for the full amount of the debts and demands aforesaid, which shall remain unsatisfied, or so much of such debts and demands as the said court shall be of opinion ought to be satisfied, and execution shall be had upon such judgment in such and the same manner as execution may be had upon a judgment of the Court of King's Bench nevertheless, according to the orders of the court to be established by virtue of this Act, and in conformity to the provisions in this Act contained.

Copyhold or customary estate surrendered to assignees.

XI. Provided always, and be it further enacted, That in case any prisoner who shall be discharged by virtue of this Act, shall be entitled to any copyhold or customary estate, the same shall be surrendered or conveyed by such prisoner according to the custom of the manor of which such estate shall be holden, either to the assignee or assignees of the estate and effects of such prisoner, or to any purchaser or purchasers of any such copyhold or customary estate from such assignee or assignees, as the said court shall direct, and the rents and profits thereof shall be in the mean time received by such assignee or assignees for the benefit of the creditors of such prisoner, without prejudice nevertheless to the lord or lords of the manor of which any such copyhold or customary estate shall be holden.

Sale of annuities or contingent interests restrained by court.

XII. And whereas prisoners discharged by virtue of this Act may be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances, that the immediate sale thereof for payment of their debts may be very prejudicial to them, and deprive them of the means of subsistence which they might otherwise have after payment of their debts; and it may be proper in some cases to authorize the raising of money by way of mortgage for payment of the debts, or part of the debts of a prisoner discharged by virtue of this Act, and defraying expenses attending the execution of this Act, instead of selling the property of such prisoner for such purposes; Be it enacted, That in all such cases, it shall be lawful for the said court to take into consideration all circumstances affecting the property of any prisoner who shall be discharged by virtue of this Act, either at the time of the discharge of such prisoner, or at any subsequent time; and if it shall appear to the said court, that it would be reasonable to make any special order touching the same, it shall be lawful for the said court so to do, and to direct that such property as it may be expedient not to sell, or not to sell immediately, according to the provisions of this Act, shall not be so sold, and from time to time to order and direct in what manner such property shall be managed for the benefit of the creditors of such prisoner, until the same can be properly sold, or until payment of all such creditors according to the provisions of this Act, and to make such order touching the sale or disposition of such property as to the said court shall seem reasonable, considering the rights of the creditors of such prisoner to payment of their demands, and the future benefit of such prisoner after payment of his or her debts, and upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just; and if it shall appear to the said court that the debts of such prisoner can be discharged by means of money raised by way of mortgage on any property of such prisoner, instead of raising the same by sale, it shall be lawful for the said court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such prisoner in such manner as may be most consistent with the interests of such

(1) Only extends to creditors mentioned in schedule, Baker v. Sydee, 1 Taunt. 179.

prisoner, in any surplus of his or her effects after payment of such debts.

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XIII. Provided always, and be it further enacted, That in case any creditor against whom any prisoner shall have obtained his or her discharge by virtue of this Act, shall within one year after the date of the order for such discharge, apply to the said court to avoid such discharge as improperly obtained, and upon such application it shall appear to the satisfaction of the court that such prisoner has acted in any manner fraudulently in obtaining such discharge, or has wilfully concealed any of his or her estate or effects by not specifying or not properly specifying the same in such schedule as aforesaid, for the purpose of depriving the creditors against whom he shall have obtained such discharge of the benefit thereof, it shall be lawful for such court to declare the discharge so obtained by such prisoner null and void; and it shall thereupon be lawful for any creditor or creditors of such prisoner against whom such discharge shall have been obtained, to proceed against such prisoner as if such discharge had not been obtained, such creditor or creditors relinquishing all benefit of the assignment of the estate or effects of such prisoner which shall remain unapplied by the assignee or assignees appointed under this Act; and any of such creditors who shall have detained such prisoner in custody at the time of such discharge shall be at liberty to apply to such court to remand such prisoner again into custody on the same process from which he or she had been so discharged; and such court shall have power to remand such prisoner accordingly, by warrant under the hand and seal of the commissioner of the said court, which warrant shall be executed by an officer of the said court to be appointed for such purpose, and shall be sufficient authority for the arrest and detention of such prisoner, upon the process from which such prisoner was before discharged; and so much (if any) of the estate or effects of such prisoner as shall then remain in the hands of the assignee or assignees thereof, after paying all the just charges and expenses of such assignee or assignees to be allowed by the said court, shall be reconveyed or re-assigned or paid to such prisoner as the said court shall direct; but so much of such estates and effects as shall have been before applied in payment of the debts of such prisoner, shall be retained by the creditors who shall have received the same in part of their respective demands, excepting only the creditor or creditors who shall apply to the court to avoid such discharge, who shall repay the dividend or dividends received by him, her or them respectively, to the assignee or assignees of the estate and effects of such prisoner, before such order, declaring such discharge null and void, shall be delivered out by the said court.

Court may on complaint of creditor within one year, avoid discharge of prisoner, on being satisfied that he obtained his discharge fraudulently.

XIV. And be it further enacted by the authority aforesaid, That in case any prisoner who shall have been discharged by virtue of this Act, shall become able to pay all or any part of the debts due from him or her, and against which he or she shall have obtained such discharge, after a reasonable allowance for the maintenance of such debtor, and his or her family, and payment of his or her debts, contracted after such discharge, or to which such discharge did not extend, it shall and may be lawful for any creditor or creditors against whom he or she shall have obtained such discharge, to apply to the court for liberty to proceed against such debtor, notwithstanding such discharge; and in case it shall appear to the satisfaction of such court, that such debtor is of ability to pay such demand, or any part thereof, it shall be lawful for such court to revoke such discharge either wholly or upon payment of such sum or sums of money for the benefit of the persons against whom such discharge shall have been obtained, either in gross, or by several payments, as to such court shall appear reasonable, or to permit execution to be taken out on the judgment entered up in such court upon the engagement of such prisoner, for such sum of money as the said court shall think fit, to be distributed rateably amongst the creditors entitled under such engagement, and such proceedings shall and may be had according to the discretion of the said court from time to time, until

When it shall appear to court after prisoner shall have obtained discharge that he is able to pay his debts, court shall revoke such discharge.

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the whole of the debts due to the several persons against whom such discharge shall have been obtained, shall be fully paid and satisfied, together with such costs as such court shall think fit to award: Provided always, that in case any such application shall appear to the court to be ill founded and vexatious, it shall be lawful for the court not only to refuse to make any order on such application, but also to dismiss the same, with such costs as to the court shall appear reasonable.

Vexatious applications.

Allowance for a discovery of prisoner's estate six months after appointment of assignees.

XV. And be it further enacted, That all and every person who shall, at any time after the expiration of six calendar months from the date of the appointment of any assignee or assignees of the estate and effects of any prisoner under the authority of this Act, voluntarily come and make discovery of any part of such prisoner's estate not specified in the said schedule and not before come to the knowledge of the assignee or assignees of such prisoner's estate, either to the said assignee or assignees or the commissioner of the said court, shall be allowed five pounds *per centum*, and such further and other reward as the said assignee or assignees, or the major part in value of the creditors of such prisoner present at any meeting of the said creditors, shall think fit, to be paid out of the net proceeds of such prisoner's estate which shall be recovered on such discovery, which shall be paid to the person or persons so discovering the same by the said assignee or assignees, who shall be allowed the same in his, her or their accounts.

Disclosure of estate of prisoner six months after discharge.

XVI. And be it further enacted, That all and every person and persons who hath or have accepted or shall accept any trust or trusts, or shall be possessed of and wilfully conceal or protect any estate real or personal, of any prisoner who shall be discharged under the authority of this Act, and knowing such discharge, shall not, within the space of six calendar months after such discharge, disclose such trust and estate in writing, either to the assignee or assignees of such prisoner's estate, or to the commissioner of the said court, and submit himself, herself or themselves to be examined touching the same on oath before such commissioner, or before such person being a justice of the peace as he shall appoint, if thereunto required, and truly discover and disclose the same and all particulars thereof, shall forfeit the sum of one hundred pounds of lawful money of *Great Britain*, and double the value of the estate whether real or personal so concealed, to and for the use of the creditors of such prisoner, to be recovered by action of debt in any of his Majesty's Courts of Record at *Westminster*, in the name of the assignee or assignees of such prisoner, or of any one of his, her or their creditors who shall first sue for the same, with full costs of suit.

Penalty.

On prisoner dying leaving assets sufficient creditors may apply to court to proceed on judgment entered into on his engagement to pay debts not satisfied.

XVII. And be it further enacted, That in case any prisoner who shall have been discharged by virtue of this Act, shall die leaving assets real or personal, after payment of all his or her debts, exclusive of the debts from which such prisoner shall have obtained such discharge, it shall be lawful for the person or persons entitled to so much of such debt or debts, from which such discharge shall have been obtained as shall remain unpaid, to apply to the said court for liberty to proceed on the judgment entered in the same court on the engagement of such prisoner, in order to obtain payment of so much of such debt or debts as shall then remain due as aforesaid, and such court shall make such order thereupon as shall be just; and the heirs, executors or administrators of such deceased prisoner shall apply the assets in his, her or their hands, according to such order, but without prejudice to the demand of any other creditor or creditors of such deceased prisoner, all of which shall be first paid or satisfied: Provided always, that in case it shall at any time be made appear to such court, that the estate or effects of such prisoner, conveyed or assigned under the authority of this Act, would have been sufficient, if carefully and properly managed, to have satisfied all the debts from which such prisoner had been discharged, or to have satisfied a larger proportion of such debts than shall have actually been paid therewith, then and in any such case such court shall not authorize any further proceedings against such prisoner, or his or her assets, except for so much of the debts of such prisoner as could not have been

satisfied out of the estate and effects so conveyed and assigned in case the same had been carefully and properly managed and rendered productive for the discharge of such debts: Provided also, that in no case interest shall be allowed on any such debt from the time of such discharge, until the said court shall order that interest shall again run upon debts bearing interest, which shall be wholly in the discretion of the said court as hereinafter provided.

Interest.

XVIII. And be it further enacted by the authority aforesaid, That all the estate, right, title, interest, and trust of every prisoner who shall be discharged by virtue of this Act, of, in and to all the real estate as well freehold as copyhold or customary, and of, in and to all the personal estate, debts and effects of every such prisoner, shall immediately from and after the order of such court as aforesaid for the discharge of such prisoner, be and the same are hereby vested in the person or persons to whom the same shall, by the order of the said court be directed to be conveyed and assigned as aforesaid, in case such person or persons shall consent to accept the same; and the conveyance and assignment which shall be made in pursuance of such order shall be without stamps, and shall, together with this Act be good and effectual in law, to all intents and purposes whatsoever, to vest the estate and effects therein comprised in the person or persons to whom the same shall, by order of such court, be directed to be conveyed and assigned as aforesaid, his, her, or their heirs, executors, administrators and assigns, according to the estate and interest which the prisoner had therein, and every such conveyance and assignment shall be in trust for the benefit of the creditor or creditors of every such prisoner against whom such prisoner shall have obtained his or her discharge by virtue of this Act, in respect of and in proportion to the debts justly due to them respectively; and every person and persons to whom any such assignment and conveyance as aforesaid shall be made, is and are hereby empowered to sue from time to time, as there may be occasion, in his, her, or their own name or names, for the recovery and obtaining possession of any estate or effects of any such prisoner, and also to execute any power vested in or created for the use and benefit of any such prisoner, and to give such discharge and discharges to any person or persons who shall respectively be indebted to such prisoner, as may be requisite: Provided always, That nothing herein contained shall extend to prejudice or affect any estate, interest or right whatsoever, of any person or persons, other than such prisoner, expectant upon or subject to any estate or interest of such prisoner so vested in such assignee or assignees as aforesaid, but that the estate, interest and right whatsoever of every other person and persons shall continue and remain and be secured to him, her and them respectively, in the same manner as if this Act had not been made.

Estate of prisoners vested in persons to whom same by order of court shall be directed to be conveyed in trust for benefit of creditors.

Proviso.

XIX. And be it further enacted by the authority aforesaid, That every such assignee or assignees as aforesaid shall, with all convenient speed, after his, her or their accepting such assignment or conveyance, use his, or her, or their best endeavours to receive and get in the estate and effects of every such prisoner, and shall, with all convenient speed, make sale of all the estate and effects of such prisoner vested in such assignee or assignees; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion, or expectancy, the same, within the space of two months after such assignment and conveyance, shall be sold by public auction, in such manner, and at such place or places, as the major part of the creditors of such prisoner entitled to the benefit thereof, who shall assemble together on any notice in writing published in the *London Gazette*, and in some daily paper printed and published in *London*, or within the bills of mortality, if the prisoner, before his or her going to prison, resided in *London*, or within the bills of mortality; and if such prisoner resided elsewhere, then in some printed newspaper which shall be published and generally circulated in or near the county, riding, division, city, town, liberty or place in which such prisoner resided before he or she was committed to prison, thirty

Assignees to get in estate and effects of prisoner, and make dividend to creditors at the end of three months, &c.

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days before any such sale shall be made, shall, under his, her or their hand or hands, approve; and every such assignee or assignees, at the end of three months at the farthest from the time of his, her or their accepting any such assignment or conveyance as aforesaid, and so from time to time as occasion shall require, shall make a fair and just dividend of all such prisoner's estate and effects which shall have been then recovered amongst such creditors of such prisoner, from whose demand such prisoner shall have obtained a discharge as before mentioned, in proportion to the just debts due to them respectively; but before any such dividends shall be made, such assignee or assignees shall make up an account of such prisoner's estate, and make oath in writing before an officer of the said court to be appointed for that purpose, or before one or more justice or justices of the peace for the county, riding, division, city, town, liberty or place in which such assignee or assignees shall reside, that such account contains a fair and just account of the estate and effects of every such prisoner got in by, or for such assignee or assignees, and of all payments made in respect thereof, and that all payments in every such account charged were truly and *bona fide* made and paid, which account so sworn shall be filed with the proper officer of the said court, and notice of the making of every such dividend shall be published in like manner as a meeting of creditors is hereinbefore directed to be published, thirty days at least before such dividend shall be made; and no creditor shall be allowed to receive any share of such dividend until he shall have made due proof of his or her debt, by oath, before some such justice or justices of the peace: and if such prisoner, or his or her assignee or assignees, or any creditor of such prisoner, shall object to any debt so claimed, the same shall be examined into by the said court, who shall have full power for that purpose, to require and compel the production of all books, papers and writings which may be necessary to be produced, as well by the person or persons claiming such debt, as by the prisoner against whom the same shall be claimed, or his or her assignee or assignees, and to examine all such persons and their witnesses on oath, as the nature of the case may require, and to take all other measures necessary for the due investigation of such claim; and the decision of the said court upon such claim shall be conclusive with respect to any dividend of the effects of such prisoner under the provisions of this Act.

Books, &c. produced.

Court to compel assignees to give a satisfactory account of effects of prisoner.

XX. And be it further enacted, That in case the prisoner so discharged, or any of his or her creditors, against whom he or she shall have obtained such discharge, shall be dissatisfied with the account of any assignee or assignees, rendered upon oath as aforesaid, or in case any such assignee or assignees shall neglect to render such account, or shall neglect to dispose of the property or collect the effects of such prisoner, or shall in any manner waste or mismanage the estate or effects of such prisoner, or neglect to make a due distribution thereof, it shall be lawful for such court, upon the application of such prisoner, or of any such creditor as aforesaid, to require such assignee or assignees to render such account on oath as directed by this Act, if not before rendered, and to examine any account so rendered, and to enquire into any waste, mismanagement or neglect of the estate or effects of such prisoner, and direct a proper administration thereof, and ascertain the produce of such estate and effects to be divided amongst the creditors of such prisoner, and direct the distribution thereof accordingly, and to require and compel the production of all books, papers and writings necessary for such purposes, and to examine all parties and their witnesses on oath, as the case may require, and to take all such measures as shall be necessary for the compelling the rendering of such account and the due investigation thereof, and the proper disposition and distribution of the effects of such prisoner according to this Act, and to award costs against any of the parties, as justice shall require; and the decisions of the said court upon all such matters shall be final and conclusive.

Books, &c. produced.

XXI. And be it further enacted, That all and every creditor and creditors of any prisoner who shall be discharged by virtue of this Act for

any sum or sums of money payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant or other security of any nature whatsoever, shall be entitled to be admitted a creditor or creditors, and to receive a dividend or dividends of the estate of such prisoner, in such manner and upon such terms and conditions as such creditor or creditors would have been entitled unto such dividends by the laws now in force, if such prisoner had become bankrupt, and without prejudice in future to their respective securities, otherwise than as the same would have been affected by proof made in respect thereof by the creditor under a commission of bankrupt, and a certificate obtained by the bankrupt under such commission, but subject nevertheless to the terms of the engagement of such prisoner for future payment of his or her debts, in case such prisoner should become able to pay the same as hereinbefore directed.

Creditors for annuities, &c. entitled to dividends in such manner as if prisoner had become bankrupt, &c.

XXII. Provided always, and be it further enacted, That from the date of any such order of discharge as aforesaid, all interest on any debt bearing interest of the prisoner so discharged, shall cease, and shall not be computed in the amount of such debt in the distribution of the estate and effects of such prisoner under the authority of this Act, but if it shall appear to the satisfaction of the said court that such estate and effects alone or together with the future estate and effects of such prisoner, are not only sufficient for payment of the principal of all the debts of such prisoner payable thereout under the authority of this Act, together with all other debts of such prisoner, and to afford such prisoner competent means of future subsistence, but are so considerable as to render it fit that interest should be allowed on debts of such prisoner bearing interest from any period after the date of such order of discharge, it shall be lawful for the said court to order such interest to be paid accordingly, and to fix the time from which such interest shall be computed, having regard always to the unproductive state of the effects of such prisoner during the administration thereof, under the authority of this Act.

Interest on debts of prisoner to cease, unless his effects are sufficient to bear it.

XXIII. And be it further enacted, That no suit in law or equity shall be commenced by any assignee or assignees of any such prisoner's estate and effects without the consent of the major part in value of the creditors of such prisoner, who shall meet together pursuant to a notice for that purpose, to be given at least ten days before such meeting, in the *London Gazette*, or other newspaper, as hereinbefore required, previous to the sale of any estate of such prisoner.

Assignees not to commence any suit without consent of creditors.

XXIV. And be it further enacted, That the proper officer of the court to be established by virtue of this Act shall, on the reasonable request of such prisoner, or of any creditor or creditors of such prisoner, or his, her, or their attorney, produce and shew to such prisoner, creditor or creditors, or his, her or their attorney, at such times as the said court shall direct, such petition, schedule, oath, order and judgment, and all other orders and proceedings made and had in such matter; and that a true copy of every such petition, schedule, oath, order, judgment and other proceedings, signed by the officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, schedule, order, judgment, or other proceeding, as the case may be, without being written on stamped paper, shall at all times be admitted in all courts whatever, as legal evidence of the same respectively.

Officer of court to produce its proceedings when required.

Copy, evidence.

XXV. Provided also, and be it further enacted, That nothing in this Act shall extend or be construed to prevent any mortgage, charge, or lien upon the estate of such prisoner, or any part thereof, made prior to the discharge of such prisoner by virtue of this Act, to take place upon the lands, tenements or hereditaments, or personal estate and effects comprised in or charged or affected by such mortgage, charge, or lien respectively, nor to prevent any statute staple, statute merchant, recognizance, or judgment acknowledged by or obtained against any such prisoner, prior to such discharge, to take place upon the lands, tenements, or real estates of such prisoner, and also where any inquisition shall have been taken upon any statute or recognizance, or any

Mortgages, &c. on estate of prisoner not to be affected, &c.

No. XLII. 53 Geo. III. c. 102.

writ or execution shall have been taken out and delivered to the sheriff or proper officer upon any such judgment, before such prisoner shall have obtained his or her discharge as aforesaid, the personal estate of such prisoner shall be subject thereto, for so much as shall remain due upon such statute, recognizance or judgment respectively, in like manner as the same would have been subject respectively if this Act had not been made; any thing hereinbefore contained to the contrary notwithstanding.

'XXVI. And whereas a prisoner who may be entitled to and claim 'the benefit of this Act, may be seised and possessed of or entitled to 'lands, tenements or hereditaments, to hold to such prisoner for the 'term of his or her life, or other limited estate, with power of granting 'leases either at rack rents, or taking fines and reserving small rents for 'one, two or three lives, in possession or reversion, or for some number 'of years determinable upon life or lives, or for years absolute, or may 'have powers over real or personal estate, which such prisoner could 'execute for his or her own advantage, and which said powers ought to 'be executed for the benefit of the creditors of such prisoner;' Be it therefore enacted by the authority aforesaid, That in every such case all and every the powers of leasing, and all such other powers as aforesaid, over real or personal estate, which are or shall be vested in any such prisoner as aforesaid, shall be and are hereby vested in the assignee or assignees of the real and personal estate of such prisoner by virtue of this Act, to be by such assignee or assignees executed for the benefit of all and every the creditors of such prisoner as aforesaid.

Power of leasing of lands, &c. in prisoner, vested in assignees for benefit of creditors.

XXVII. Provided always, and be it further enacted, That nothing in this Act contained shall extend to entitle the assignee or assignees of the estate and effects of any prisoner being an officer of the army or navy, or beneficed clergyman or curate, to the pay of such officer, or the income of any benefice or curacy, for the purposes of this Act: Provided always, nevertheless, that it shall be lawful for such assignee or assignees to apply for and obtain a sequestration of the profits of any such benefice, for the payment of the debts of any such clergyman, against which such clergyman shall have obtained a discharge by virtue of this Act; and the order for such discharge shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceeding to authorize the same; and such sequestration shall accordingly be issued as the same might have been issued upon any writ of *levari facias* founded upon any judgment against such clergyman: Provided also, that it shall be lawful for the said court to order such portion of the pay or half-pay of any such officer of the army or navy, as on communication from the said court to the Secretary at War, or the lords commissioners of the Admiralty or their secretary, he or they may respectively consent to by writing under the hand of the said Secretary at War, or the lords commissioners or secretary of the Admiralty, to be applied in payment of his debts, and for that purpose to be paid to the assignee or assignees, and such order and consent being lodged in the office of the Paymaster of his Majesty's forces, or of the Treasurer of the navy as the case shall require, such paymaster or treasurer shall give directions accordingly, and such proportion of the pay or half-pay of such officer as shall be specified in such order and consent shall be paid to his assignee or assignees until the said court shall make order to the contrary.

Pay of officer or income of any benefice not affected; but assignees may obtain a sequestration of profits of such benefice.

Perjury.

XXVIII. And be it further enacted, That if any prisoner who shall apply for his or her discharge under the provisions of this Act, or any other person taking an oath under the provisions of this Act, shall wilfully forswear and perjure himself or herself in any oath to be taken under this Act, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury.

Prisoner discharged not to be arrested for same debt.

XXIX. And be it further enacted, That no prisoner who shall have obtained his or her discharge by virtue of this Act, shall at any time after such discharge, so long as the same shall remain in force, be imprisoned by reason of any judgment or decree obtained for payment of

money only, or for any debt, damages, contempt for non-payment of money, costs or sums of money (1) contracted, incurred, occasioned, owing or growing due, with respect to which such discharge shall have been obtained, but that upon every arrest upon any such judgment or decree, or for any such debt, damage, contempt, costs, sum and sums of money, it shall and may be lawful for any judge of the court from which any such process shall have issued, upon shewing to such judge the copy of the order for such discharge as aforesaid, and upon affidavit that such discharge still remains in force, to release from custody such prisoner as aforesaid; and at the same time, if such judge shall in his discretion think fit, to order the plaintiff or plaintiffs in such suit or suits, or other person or persons suing out such process, to pay such prisoner the costs which he or she shall have incurred on such occasion, or so much thereof as to such judge shall seem just and reasonable, such prisoner causing a common appearance to be entered for him or her in the action or suit for any such debt as aforesaid.

Prisoner not to be discharged of any debt incurred subsequent to application for discharge.

XXX. Provided always, and be it further enacted, That no prisoner shall be discharged by virtue of this Act, of any debt or other matter accrued or incurred subsequent to the application of such prisoner to be so discharged; and if it shall appear to the court to be established by virtue of this Act, that any prisoner applying to be discharged as aforesaid, stands charged in custody with any debt or other matter accrued or incurred subsequent as well as previous to such application, then and in such case it shall and may be lawful to and for such court to discharge the person of such prisoner only from such debts or other matters as had accrued or been incurred previous to such application, and to remand him or her back to the custody of the keeper of the prison from whence he or she was brought, for all debts and other matters for which he or she shall stand charged, and which shall have accrued or been incurred subsequent to such application.

General issue.

XXXI. And be it further enacted, That if any action of escape, or any suit or action be brought against any judge, justice of the peace, sheriff, gaoler or keeper of any prison, or other person for performing the duty of his office, in pursuance of this Act, such judge, justice, sheriff, gaoler or keeper, or other person may plead the general issue, and give this Act in evidence; and if the plaintiff be nonsuited or discontinue his or her action, or verdict shall pass against him or her, or judgment should be had upon demurrer, the defendant shall have treble costs.

Treble costs.

Action against prisoner discharged, how defended.

XXXII. And be it further enacted, That if any *scire facias* or action of debt, or upon judgment or any other suit or action shall be brought against any prisoner, his or her heirs, executors or administrators, upon any judgment obtained against any such prisoner, or any statute or recognizance acknowledged by him or her, or any other cause of action from which such prisoner shall have obtained his or her discharge, by virtue of this Act, except under the order of court to be established by virtue of this Act, it shall and may be lawful for any such prisoner, his or her heirs, executors or administrators, to plead generally that such prisoner was duly discharged from such debt or demand, according to this Act, by the order by which such discharge shall have been obtained, and that such discharge remains in force, without pleading any other matter specially whereto the plaintiff or plaintiffs shall or may reply generally, and deny the matters pleaded as aforesaid, or reply any other matter or thing which may shew the defendant or defendants not to be entitled to the benefit of this Act, or that such prisoner was not duly discharged according to the provisions of this Act, in the same manner as the plaintiff or plaintiffs might have replied, in case the defendant or defendants had pleaded this Act, and his discharge by virtue of this Act specially; and if the plaintiff or plaintiffs be nonsuited, discontinue his or her action, or verdict pass against him, her or them, or judgment

Double costs.

(1) Trespass for mesne profits not within the Act, *Lloyd* v. *Peel*, 3 B. and A. 407.

No. XLII. 53 Geo. III. c. 102.

shall be had on demurrer, the defendant or defendants shall have double costs.(1)

Prisoner wantonly wasting effects in prison, not entitled to benefit of Act.

XXXIII. Provided always, and be it further enacted, That in case it shall appear to the satisfaction of the court to be established by virtue of this Act, that any prisoner who shall apply for a discharge by virtue of this Act, has wantonly wasted his or her estate or effects whilst in prison, or fraudulently disposed thereof, or any part thereof, with intent to deprive his or her just creditors of the benefit thereof, or has wilfully remained in prison although entitled to be discharged therefrom by virtue of this Act, or otherwise with intent to consume his or her property in prison, instead of applying the same to the discharge of his or her just debts, such prisoner shall not be entitled to the benefit of this Act, unless on special circumstances the said court shall think fit to grant such discharge.

Attornies, servants, &c. embezzling money, not entitled to benefit of Act, unless creditors consent, or prisoner confined ten years.

XXXIV. Provided also, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to release or discharge any attorney at law, solicitor, or any other person acting or pretending to act as such with regard to any debt or demand for any money or other effects recovered or received by him for the use of any person or persons, bodies corporate or politic, and by any such attorney, solicitor or other person acting as such, embezzled, concealed or converted to his own use; or to release or discharge any servant or other person employed or entrusted as such, with regard to any debt or demand for or on account of any money, goods or other effects received or possessed by him or her for the use or account of his or her master or masters, or employer or employers, and by such servant or other person so embezzled, concealed or converted to his or her own use; or to release or discharge any person with regard to any debt or demand arising from or created by any breach of trust or confidence; any thing herein contained to the contrary thereof in any wise notwithstanding; unless the person or persons to whom such debt or demand shall be due or owing shall consent to the discharge of such prisoner by virtue of this Act, or unless such prisoner shall have been confined in prison for such debt or demand for the space of ten years before the time when such prisoner shall apply for his or her discharge by virtue of this Act.

No prisoner obtaining credit by false pretences or removing effects liable to be distrained for rent, entitled to benefit of Act, unless creditors consent or prisoner confined five years.

XXXV. Provided also, and be it further enacted, That no prisoner, who knowingly and designedly, by false pretence or pretences, or under any fictitious name or names, assumed for the purposes of obtaining credit, or by any other fraudulent means shall have obtained from any person or persons money, goods, wares, merchandizes, bonds, bills of exchange, promissory notes, or other securities for money, or other effects; or who shall have contracted any debt by fraudulently obtaining false credit or by any other fraudulent means, or who shall have fraudulently removed or caused to have been removed any stock, cattle, goods or effects of the value of thirty pounds or upwards, which were subject or liable to be distrained by his or her landlord or landlords for any rent or rents, whereby such landlord or landlords shall have lost all or some part of such rent or rents, shall have any discharge by or under this Act, from the debt or demand arising from or remaining due in consequence of such fraudulent conduct; unless the person or persons who shall be entitled to such debt or demand shall consent to the discharge of such prisoner by virtue of this Act, or such prisoner shall have been confined in prison for such debt or demand for the space of five years before the time when such prisoner shall apply for his or her discharge by virtue of this Act.

Prisoner suffering bail to be charged.

XXXVI. Provided also, and be it further enacted, That no prisoner who shall have suffered any person, who has become bail or surety for

(1) The Insolvent Act, 53 Geo. III. c. 100, discharges a prisoner from the demands of such creditors only as are named in his schedule of creditors, notice of applying for discharge, and order of discharge; and therefore his discharge does not interrupt the cause of an action brought against him by a plaintiff whose claim the prisoner has not included in his notice and schedule of creditors; Baker v. Sydee, 7 Taunt. 179.

such prisoner, to be charged in respect of such bail or surety, shall be discharged by virtue of this Act from any debt or demand arising on such account, without the consent of the person or persons entitled to such debt or demand.

Prisoner charged in execution for damages recovered in certain actions, not entitled to discharge without consent of person injured, or unless confined five years.

XXXVII. Provided also, and be it further enacted, That no prisoner who shall be charged in execution for damages recovered in any action for criminal conversation with the wife of the plaintiff in such action, or in any action for seducing or carnally knowing the daughter or female servant of the plaintiff in such action, or in any action for a malicious prosecution, or in any action for any other malicious injury, shall have any discharge from such debt or damages under this Act, unless the person or persons entitled to the benefit of such debt or damages shall consent to the discharge of such prisoner by virtue of this Act; or unless such prisoner shall have been confined in prison for such debt or damage for the space of five years before the time when such prisoner shall apply for his or her discharge under this Act.

Bankrupt who shall not have obtained his certificate, &c.

XXXVIII. Provided also, and be it further enacted, That no prisoner against whom any commission of bankrupt shall have issued and shall remain in force, and who shall not have obtained a certificate of his or her conformity to the several statutes concerning bankrupts under such commission, shall be entitled to be discharged by virtue of this Act from any debt for which such prisoner shall be detained in custody, and which might have been proved under such commission, unless such prisoner shall have been so detained in prison for the space of five years before the time when such prisoner shall apply for his or her discharge under this Act.

Prisoner assigning estate after imprisonment, so that creditors cannot have benefit thereof, to lose benefit of Act.

XXXIX. And whereas debtors may, with a view to defraud their creditors, sell, transfer, convey or assign their estate and effects, or some part thereof, but it may be difficult to prove that such sale or transfer, conveyance or assignment, was made with a fraudulent design; Be it enacted, That whenever it shall be proved by one or more credible witness or witnesses, or by the confession of any prisoner who shall apply for his or her discharge by virtue of this Act, that such prisoner has, since the time of contracting any debt, of or from which he or she shall so seek to be discharged, sold, transferred, conveyed or assigned to any person or persons all or any part of his estate or effects subsequent to the time of his imprisonment, without just cause for so doing (to be determined by the court to be established by virtue of this Act,) and such sale, transfer, conveyance or assignment, shall remain in force, so that the creditors of such prisoner cannot have the benefit of such estate or effects under this Act, without suit at law or equity, every such prisoner shall lose all the benefit and advantage that he or she might otherwise have claimed under the authority of this Act, unless all the creditors of such prisoner against whom such prisoner shall seek to be discharged by virtue of this Act will consent to such discharge.

Prisoner losing money by gaming not to have benefit of Act, unless with consent of creditors, or confined five years.

'XL. And whereas many prisoners squander their property by playing 'at cards, dice, and other unlawful games, whilst in prison, to the 'great injury of their creditors;' Be it enacted, That nothing in this Act shall extend or be construed to extend to discharge or release any prisoner who hath or shall have lost, since the time of his or her commitment to prison for any debt with which he or she shall stand charged at the time when application shall be made for his or her discharge by virtue of this Act, the sum or value of ten pounds in any one day, or fifty pounds in the whole, since such commitment as aforesaid, in playing at or with cards, dice, tables, tennis, bowls, billiards, or any other game or games whatsoever, or in or by bearing a share or part in the stakes, wagers or adventures, or in or by betting on the sides or hands of such as do play as aforesaid, unless all the creditors of such prisoner against whom such prisoner shall seek to be discharged by virtue of this Act shall consent to such discharge, or unless such prisoner shall have been confined in prison for the space of five years at the least, since the time when any such money was so lost as aforesaid.

XLI. Provided also, and be it further enacted, That if any prisoner

No. XLII. 53 Geo. III. c. 102.

Prisoner who shall have made conveyance of estate in trust for particular creditors not to have benefit of Act.

seeking the benefit of this Act, shall appear to the court to whom application shall be made for such purpose, to have made, within five years before the application of such prisoner to be discharged by virtue of this Act, any conveyance or assignment of all or any part of his or her estate or effects in trust or otherwise for the benefit of any particular creditor or creditors, with intent to give an undue preference to such creditor or creditors, and afterwards to obtain a discharge from the demands of any other creditor or creditors by virtue of this Act, such prisoner shall have no benefit of this Act, unless such person or persons for whose benefit any such conveyance or assignment shall have been made shall first relinquish the same; and all such estate and effects shall be conveyed or delivered to such person or persons as the court shall direct, for the benefit of all the creditors of such prisoner under the provisions of this Act; or unless all the creditors against whom such discharge shall be sought shall consent thereto.

Assignees may apply to the court to have prisoner who has obtained his discharge, further examined.

'XLII. And whereas the estates both real and personal of any prisoner 'who may be discharged by virtue of this Act may not be sufficiently 'described or discovered in the schedule before directed to be delivered 'upon oath by such prisoner, or the assistance of such prisoner may be 'necessary to adjust, make out, recover or manage his estate or effects 'for the benefit of his or her creditors;' Be it therefore enacted by the authority aforesaid, That it shall and may be lawful to and for the assignee and assignees of the estate and effects of any such prisoner who shall obtain his or her discharge in pursuance of this Act, from time to time to apply to the court to be established by virtue of this Act, that such prisoner may be further examined as to any matters or things relating to his or her estate and effects, either by such court, or by any justice of the peace for the county, riding, division or place where such prisoner shall then reside; and if such court shall direct any such examination before any such justice, such justice shall send for or call before him such prisoner, by such warrant, summons, ways or means as he shall think fit; and if such prisoner shall appear before such justice, such justice shall examine him or her upon oath, or otherwise, as to such matters and things as such assignee or assignees shall desire relating to the estate and effects of such prisoner; and if any such prisoner, on payment or tender of payment of such reasonable charges as such justice shall judge sufficient, shall neglect or refuse to appear before such justice, not having a lawful excuse allowed by such justice, or, being come before such justice, shall refuse to be sworn or to answer such questions as by such justice shall be put to him or her, relating to the discovery of his or her estate and effects vested or intended to be vested in such assignee or assignees as aforesaid, as required by the order of the said court, such justice shall certify such default to the said court, and thereupon, and also in case such prisoner shall neglect or refuse to appear before such court to be examined by such court, if the court shall think fit so to order, or, appearing before such court, shall refuse to be sworn, or to answer such questions as shall be put to him or her relating to the discovery of his or her said estate or effects, then and in any of such cases it shall be lawful for the commissioner of such court, by warrant under his hand and seal, to commit such prisoner so offending to the common gaol of any county or place, there to remain without bail or mainprize, until such time as he or she shall submit himself or herself to such commissioner, and answer upon oath or otherwise as shall be required, to all such lawful questions as shall by such commissioner be put or ordered to be put to him or her for the purposes aforesaid.

Imprisonment.

Assignees with consent of majority of creditors, may take composition from debtors of prisoner.

XLIII. And be it further enacted, That it shall and may be lawful at all times hereafter, for any assignee or assignees of the estate and effects of any prisoner discharged by virtue of this Act, by and with the consent of the major part in value of the creditors of such prisoner who shall be present at a meeting to be had on twenty-one days' notice being previously given for the purpose in the *London Gazette*, if the prisoner was in custody in *London*, or within the weekly bills of mortality, at

the time of his or her discharge, and if not, then in some newspaper which shall be published and circulated in the county, city or place in or near which such prisoner shall have been so in custody, to make composition with any person who shall be a debtor or accountant to such prisoner, where a composition shall appear necessary or reasonable, and to take such reasonable part of any debt due to such prisoner, as can, upon any such composition, be gotten, in full discharge of such debt, and also to submit to arbitration any difference or dispute between such assignee or assignees and any person or persons, for or on account or by reason of any matter, cause or thing, relative to the estate or effects of such prisoner; and every such assignee or assignees is or are hereby indemnified for what he, she or they shall fairly do in the premises, in pursuance of this Act.

Court may hear complaints against assignees, and may remove them.

XLIV. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the said court to be established by virtue of this Act, from time to time, upon the petition of any prisoner or of any creditor or creditors of such prisoner, complaining of any insufficiency, fraud or misconduct of any assignee or assignees of the estate and effects of such prisoner, to summon all parties concerned, and upon hearing the parties concerned, to make and give such orders and directions therein, either for the removal of such assignee or assignees and appointing any new assignee or assignees in the place of such assignee or assignees so to be removed, and for the prudent, just and equitable management and distribution of the estate and effects of any such prisoner, for the benefit of his or her creditors, as the said court shall think fit; and in case of the removal of any assignee or assignees, and the appointing of any new assignee or assignees, the estate and effects of such prisoner shall from thenceforth be divested out of the assignee or assignees so removed, and be vested in and delivered over to such new assignee or assignees, in the same manner and for the same intents and purposes as the same were before vested in the assignee or assignees first appointed; any thing in this Act contained to the contrary notwithstanding.

In case of death or incapacity of assignee, another appointed.

XLV. And be it further enacted, That in case of the death or incapacity of any assignee of the estate and effects of any prisoner discharged by virtue of this Act, or in case any assignee shall be unwilling to act as assignee, it shall and may be lawful to and for any creditor of such prisoner to apply to the said court to appoint a new assignee or assignees, with like powers and authorities as are given by this Act to the original assignee or assignees; and the said court shall have power to appoint such new assignee or assignees, and to oblige any assignee who shall be removed, and the heirs, executors, administrators and assigns of any deceased assignee, to account for and deliver up all such estate and effects, books, papers, writings, deeds, and all other evidences relating thereto, as shall remain in his, her or their hands, to be applied for the purposes of this Act; and the decision of the said court thereupon shall be final and conclusive.

Assignees, &c. not paying over balance of estate in their hands proceeded against.

XLVI. And be it further enacted, That in case any assignee or assignees of the estate and effects of any prisoner discharged by virtue of this Act, or the heirs, executors or administrators of any deceased assignee or assignees, shall not deliver over any part of such estate or effects, or pay the balance of the produce of any such estate or effects found to be in the hands of such deceased assignee or assignees, or of such heirs, executors, or administrators as aforesaid, according to the order of the said court, it shall be lawful for the said court, by warrant under the hand and seal of the said commissioner, directed to the proper officer of the said court to be appointed for that purpose, to order the person or persons disobeying such order to be arrested, and committed to the next county gaol, there to remain, without bail or mainprize, until such person or persons shall have obeyed such order, and paid all such costs as the said court shall award to be paid in respect thereof, or until such court shall make other order to the contrary.

Imprisonment.

No. XLII. 53 Geo. III. c. 102.

Committed for contempt of courts, in not paying costs, &c. entitled to benefit of Act.

'XLVII. And whereas persons are often committed by the courts of 'law and equity for contempts in not paying money ordered or 'awarded to be paid, and also for not paying of costs duly and regu-'larly taxed and allowed by the proper officer, after proper demands 'made for that purpose, and also upon the writ *de excommunicato* '*capiendo*, or other process, for or grounded on the non-payment of 'money, costs or expenses, in some cause or proceeding in some eccle-'siastical court, or for contempt of such court by non-payment of 'money, costs or expenses;' Be it further enacted, That all such persons so committed shall be entitled to the benefit of this Act, on and subject to the same terms, conditions and restrictions, as are herein expressed and declared with respect to prisoners for debt only.

Affirmation of Quaker taken.

Perjury.

XLVIII. And be it further enacted, That in all cases wherein by this Act an oath is required, the solemn affirmation of any person being a Quaker shall and may be accepted and taken in lieu thereof; and every person making such affirmation, who shall be convicted of wilful false affirmation, shall incur and suffer such and the same penalties as are inflicted and imposed upon persons convicted of wilful and corrupt perjury.

Proceedings in court may be amended.

XLIX. And whereas prisoners claiming the benefit of this Act may be liable to be deprived of such benefit on account of mere matters of form, or errors or omissions in their petitions, schedules or other proceedings directed by this Act; Be it further enacted, That it shall and may be lawful to and for the court to be established by virtue of this Act, to amend matters of form, and to supply omissions, or to correct errors in the petition, schedule or other proceedings directed by this Act, in case the same shall appear to the said court to have arisen from ignorance, mistake or inadvertency, and not to have been wilful and fraudulent; any thing hereinbefore contained to the contrary notwithstanding.

Persons taking benefit of insolvent Act within five years, not entitled to relief.

L. Provided always, and be it further enacted, That no person who shall have taken the benefit of any Act heretofore passed for the relief of insolvent debtors shall have the benefit of this Act, or be deemed to be within the intent and meaning thereof, so as to be discharged under the same, until the expiration of the term of five years from the time of such former discharge; any thing hereinbefore contained to the contrary thereof notwithstanding; unless from special circumstances the said court should be of opinion that it would be just and reasonable that such prisoner should be again discharged by virtue of this Act.

Crown debtors, or persons committed for offences against revenue, not entitled to benefit of Act.

LI. Provided always, and be it further enacted, That this Act shall not extend, or be construed to extend, to discharge any prisoner seeking the benefit of this Act, with respect to any debt or penalty with which he or she shall stand charged at the suit of the crown, or of any person for any offence committed against any Act or Acts of Parliament relative to his Majesty's revenues of customs, excise, stamp or salt duties, or any of them, or any branches of the said public revenue, or at the suit of any sheriff or other public officer, upon any bail bond entered into for the appearance of any person prosecuted for any offence committed against any Act or Acts of Parliament relative to his Majesty's said revenues of customs, excise, stamps or salt duties, or any other branches of public revenue, unless three of the Lords Commissioners of his Majesty's Treasury for the time being shall certify under their hands their consent to the discharge of such prisoner, upon the terms and conditions prescribed by the Act.

Prisoner discharged not entitled to benefit within five years, unless debts be necessarily incurred, &c.

LII. Provided always, and be it further enacted, That no person who shall have been at any time discharged by virtue of this Act shall again be entitled to the benefit thereof within the space of five years after such discharge, unless three-fourths in number and value of the creditors against whom such person shall seek to be discharged by virtue of this Act shall signify his, her or their assent to such discharge, or it shall be made appear to the satisfaction of the court to be established by virtue of this Act, that such person has since his or her former discharge endeavoured by industry and frugality to pay all just demands

upon him or her, and has incurred no unnecessary expense, and that the debts which such person has incurred, subsequent to such former discharge, have been necessarily incurred for the maintenance of such person or his or her family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself or herself, and his or her family, or from debts incurred prior to such former discharge, to which such discharge did not extend, or from debts incurred subsequent to such discharge in consequence of engagements entered into or acts done prior to such discharge.

Foreigners.

LIII. Provided always, and be it further enacted, That no person, not being a natural born subject of this realm, shall have the benefit of this Act, except under such circumstances, and on such terms and conditions, as to the said court to be established by virtue of this Act shall seem fit and reasonable; any thing in this Act contained to the contrary notwithstanding.

Time allowed to answer objection to discharge of prisoner.

LIV. Provided always, and be it further enacted, That if any objection shall be made to the discharge of any prisoner on the ground of any misconduct of such prisoner, and it shall appear to the said court that such prisoner might not have been aware of such objection so as to be able to answer the same, such court shall allow such prisoner sufficient time to answer such objection; and shall also, if necessary, require such objection to be stated in writing to such prisoner, so that such prisoner may be fully apprized thereof.

Court empowered to discharge, notwithstanding objection on ground of misconduct.

LV. Provided also, and be it further enacted, That in case it shall appear to the satisfaction of the said court, that any misconduct which shall be attributed to any prisoner to prevent his or her discharge, although strictly within the intent and meaning of this Act, was nevertheless attended with such circumstances, or the injury thereby done was to so small an amount, that it may not be fit that such prisoner should on that account be deprived of the benefit of this Act, it shall be lawful for the said court to discharge such prisoner, notwithstanding any objection founded on such misconduct, either in the same manner as if such objection had not been made, or on such further terms and conditions as to the said court shall appear reasonable, in consequence of such misconduct: Provided also, that in case it shall appear to the satisfaction of the said court, that any debt contracted by any prisoner seeking to be discharged by virtue of this Act, was contracted under any fraudulent circumstances not specially provided for by this Act, it shall be lawful for the said court to except such debt from the discharge to be granted to such prisoner, either absolutely, or upon such terms and conditions as to the said court shall appear to be proper; and if such prisoner shall be in actual custody for such debt, it shall be lawful for the said court to remand such prisoner according to the determination of the said court upon such debt.

Debt contracted fraudulently not discharged.

Prisoners of unsound mind.

LVI. And be it further enacted, That if any person who shall at any time be a prisoner in any such prison as aforesaid, upon any such process as aforesaid, shall be or become of unsound mind, and therefore incapable of taking the benefit of this Act in such manner as he or she might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county, riding, division or place wherein such prison shall be, to attend at the said prison, and enquire into the state of mind of such prisoner; and thereupon, and also in case any such justice or justices shall receive information by other means that any such prisoner is of unsound mind as aforesaid, such justice or justices shall go to the said prison, and by his, her or their own view, and by examination on oath of such person or persons as he or they shall think fit to examine, shall enquire into the state of mind of such prisoner; and if it shall appear to such justice or justices upon such enquiry, that such prisoner is of unsound mind, and therefore incapable of taking the benefit of this Act in such manner as a person of sound mind might do, such justice or justices shall forthwith make a record of the fact, and certify the

No. XLII.
53 Geo. III.
c. 102.

same to the court to be established by virtue of this Act; and thereupon it shall be lawful for such court, at the instance of any person or persons on behalf of such prisoner, to order notice to be inserted in the *London Gazette*, and in two or more public newspapers usually circulated in the neighbourhood of such prison, and in the neighbourhood of the usual residence of such prisoner before he or she was committed to such prison, as the said court shall see fit, and shall in such order specify and direct that application will be made to such court for the discharge of such prisoner, on a day to be specified in such order, being twenty days at the least from the day of publication of such one of such Gazette and newspapers, containing such notice as shall be last published; which notice, together with service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his, her, or their attorney or attornies in such suit, shall be deemed sufficient to authorize the said court to proceed to the discharge of such prisoner, if otherwise entitled to such discharge, according to the true intent and meaning of such Act; and such court shall proceed accordingly, and shall discharge such prisoner, in case it shall appear that such prisoner might have obtained his or her discharge under this Act, if of sound mind; and thereupon such court shall direct a conveyance and assignment to be made of the estate and effects of such prisoner, and engagement for the payment of his or her debts, according to the provisions of this Act, to be executed by the clerk of the said court in the name and on the behalf of such prisoner; which conveyance, assignment and engagement shall be made accordingly, unless such prisoner shall have been found a person of unsound mind by inquisition taken under a commission in the nature of a writ *de lunatico inquirendo*, in which case such conveyance, assignment and engagement shall be executed by the committee or committees of such lunatic, in such manner as shall be directed by the Lord Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal of the United Kingdom, or such person or persons as shall be authorized by the royal sign manual to provide for the care and custody of the persons and estates of persons found lunatic by inquisition, and such conveyance, assignment and engagement so made, shall be sufficient to all intents and purposes to vest the property of such prisoner in the person or persons to whom the same shall be directed by the said court to be conveyed and assigned, and shall bind such prisoner, his or her heirs, executors and administrators, as fully and effectually as if such conveyance, assignment and engagement respectively had been duly executed by such prisoner.

Commissioner of court to appoint officers.

LVII. And be it further enacted, That it shall be lawful for the commissioner of the court to be established by virtue of this Act, to appoint such and so many officers of such court for carrying into execution the purposes of this Act, as the Lord Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal of the United Kingdom, together with the Lord Chief Justices of the King's Bench and Common Pleas, and the Chief Baron of the Exchequer for the time being, shall from time to time deem to be necessary and expedient for such purposes; and such court shall be always open, and shall be ordinarily holden in some convenient place or places in the cities of *London* or *Westminster*, or in the county of *Middlesex*, within the bills of mortality.

Court of appeal.

LVIII. And be it further enacted, That one of the judges of one of the Courts of King's Bench, Common Pleas and Exchequer at *Westminster*, shall be nominated and appointed by such courts on the first day of every term after the passing of this Act, to be a judge of a court of appeal from the court to be established by virtue of this Act; and such court of appeal shall hear and determine all appeals from any orders of the court to be established by virtue of this Act, except such orders as are herein specially directed to be final and conclusive, and such court of appeal shall have full power to affirm, reverse or alter any such order, except as aforesaid, as to such court of appeal

shall seem just and reasonable, with or without costs; and the decisions of such court of appeal shall in all cases be final and conclusive.

No. XLII. 53 Geo. III. c. 102.

Decisions final.

LIX. And be it further enacted, That this Act shall continue in force until the first day of *November* in the year One thousand eight hundred and eighteen, and thenceforth until the end of the then next Session of Parliament, and no longer.

Continuance of Act.

LX. Provided always, and be it further enacted, That this Act or any part thereof may be repealed or altered by any Act or Acts to be made in this present Session of Parliament.

Act repealed, &c.

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## [ No. XLIII. ] 54 George III. c. 23.—An Act to amend an Act of the fifty-third Year of his Majesty's Reign, intituled, "An Act for the Relief of Insolvent Debtors in *England*."—[ *10th December* 1813.]

54 George III. c. 23.
53 George III. c. 102.

WHEREAS an Act passed in the fifty-third year of his Majesty's reign, intituled, "An Act for the Relief of Insolvent Debtors in "*England*," and it is expedient to amend the said Act; Be it therefore enacted and declared by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for the commissioner appointed or to be appointed by virtue of the said Act to hold the court established by virtue of the said Act, and to exercise his office as occasion shall require in any part of *England*; but nevertheless such commissioner shall at all times have an office in some convenient place, either in the cities of *London* or *Westminster*, or in the county of *Middlesex*, within the bills of mortality, for the dispatch of business.

Place for holding the court.

II. And whereas it is required by the said Act that every prisoner applying by petition to the said court to be discharged by virtue of the said Act shall previously take the oath required by the said Act, and that such petition, with the schedule in the said Act mentioned, and the said oath, shall be filed as in the said Act mentioned; and it has been found inconvenient that such oath should be taken previous to such petition, and the order thereon; Be it therefore further enacted, That so much of the said Act as requires such oath to be taken before the presenting of such petition, and to be filed therewith, and that notice thereof should be given as provided by the said Act, be and the same is hereby repealed from and after the passing of this Act.

Taking oath previous to petition repealed.

III. And be it enacted, That instead thereof, from and after the passing of this Act, such petition shall contain an offer to take the oath required by the said Act, in such form as the circumstances of the case shall require; and that the said oath shall be taken upon or after the examination of such prisoner under the said Act, and shall thereupon be filed as the said Act directs; and that the notice required by the said Act to be given upon the order made on such petition shall not extend to such oath: Provided always, That in all cases in which such oath shall have been taken before the passing of this Act, the same shall be of the same force and effect as if this Act had not been made, and the said court shall proceed therein accordingly, if the said court shall think fit.

Petition to contain an offer to take the oath.

IV. And be it further enacted, That in all cases in which notices of the petition of any prisoner for discharge under the said Act, and of the schedule of such prisoner, and a copy of the order on such petition, are required by the said Act to be served on creditors, or persons claiming to be creditors of such prisoner, it shall be lawful for the court established by virtue of the said Act to dispense with such service, and to order that notice of such several matters may be in the form or to the effect expressed in the schedule to this Act marked (A), or in such other form or to such other effect as the said court shall direct, and that such notice may be given either by adver-

Notices under recited Act how to be given.

No. XLIII. 54 Geo. III. c. 23.

tisement in the *London Gazette* or other newspaper or newspapers, or in such other manner as the said court shall see fit; and it shall be lawful to comprise notices on behalf of several prisoners in the same advertisement or instrument, if the said court shall so order; and it shall be lawful for the said court either to direct lists of the creditors or persons claiming to be creditors of each of such prisoners to be annexed to such notice, or to direct that such notice shall refer to the schedule delivered by each of such prisoners filed in the proper office of the said court; and such notice so given according to the order of the said court shall be deemed sufficient notice to the creditors described in such list, or described in such schedule, as the case may be, any thing in the said Act to the contrary notwithstanding; and it shall in like manner be lawful for the said court to order any other notice required or authorized by the said Act or by this Act, to be given by advertisement in any newspaper or newspapers, or in any other manner as to the said court shall seem fit.

Defective notices to be remedied.

V. And be it further enacted, That in case of defect in the form or manner of service of any notice required or authorized by the said Act, or by this Act, or in the insertion of such notice in the *London Gazette*, or in any newspaper, or in any mode of notice ordered by the said court, it shall be lawful for the said court from time to time to adjourn the hearing of any petition, and to make such further order respecting the same, or respecting such notice, as to the said court shall appear to be reasonable.

Rate to be paid for advertisement.

VI. And be it further enacted, That in case any advertisement to be inserted under the authority of the said Act, or of this Act, in any newspaper, shall contain more than fifty words, there shall be paid for the insertion thereof at the rate of sixpence for every ten words contained in such advertisement beyond the number of fifty words over and above the sum of three shillings mentioned in the said Act, and no more.

In adjudications, creditors need not be specified.

VII. And be it further enacted, That in the adjudication of the said court that any prisoner is entitled to the benefit of the said Act and the order thereon, it shall not be necessary to specify the several creditors and persons claiming to be creditors of such prisoner, as required by the said Act, but it shall be sufficient, if the said court think fit, to refer in such order to the schedule sworn to by such prisoner, specifying such creditors or persons claiming to be creditors of such prisoner, either generally or specially, or with such exceptions as the circumstances of the case shall appear to the court to require.

Court empowered to order prisoners to be brought before it.

VIII. And be it further declared and enacted, That the said court shall have full power, and the same is hereby authorized, by any order for that purpose, to require the sheriff or sheriffs, keepers or gaolers of any prison, or any other officer having the custody of any prisoner, to bring before such court, or any justices of the peace at any quarter session or adjourned or special session of the peace, or out of session, as to the said court shall seem fit, any such prisoner, for any of the purposes authorized by the said Act or by this Act; which order every such sheriff, keeper, gaoler, or other officer shall obey; and for so doing such order shall be a sufficient warrant.

Court may order prisoners to be examined before justices in quarter sessions.

IX. And be it further enacted, That in case the said court, instead of ordering any prisoner to be brought before the said court for examination, shall direct such prisoner to be examined before his Majesty's justices of the peace for any county, riding, division, or place, at a general session of the peace, or any adjournment thereof, and it shall appear to the said court, from the circumstances of the case, to be proper to authorize such justices to certify their opinion, whether such prisoner is entitled to be discharged under the authority of the said Act, it shall be lawful for any creditor or creditors of such prisoner to oppose such discharge before such justices, who shall thereupon proceed to determine whether such prisoner is or is not entitled to the benefit of the said Act, and shall certify such determination to the said court established by virtue of the said Act, and it shall thereupon be lawful for the said court to proceed to adjudge accordingly, as the said court

might have done in case such prisoner had been brought before the said court; and it shall not be lawful for any creditor or person claiming to be a creditor of such prisoner to oppose the discharge of such prisoner before the said court, unless due notice shall not have been given to such creditor, or person claiming to be a creditor, according to the order of the said court for that purpose, or unless some fraud or improper conduct of such prisoner, or some irregularity not in question before the said justices, shall be made appear to the satisfaction of the said court.

Notice to be given of examination before justices.

X. And be it further enacted, That the notice to be given of the examination of any prisoner before justices of the peace, at their quarter session, or any adjournment thereof, may be given by advertisement in some public newspaper, according to the order of the said court, for relief of insolvent debtors, in the form or to the effect expressed in the schedule to this Act marked (B), or in such other form or to such other effect as the said court shall direct; and it shall be lawful to include any number of prisoners in such notice, if the said court shall so order.

Gaolers may be examined by the court or quarter sessions.

XI. And be it further enacted, That the said court, and also the justices of the peace to whom the examination of any prisoner shall be referred by the said court, shall respectively have full power, and they are hereby authorized, by order of the said court, or of the said justices respectively, as the case shall require, to cause the keepers or gaolers, or other officers of any prison, or any other person, to come before such court or justices, as the case shall require, and to examine such gaolers, keepers, officers, or other persons respectively, on oath, touching any matter relating to the execution of the said Act, and of this Act, as to the said court and the said justices respectively shall seem fit; and if any such gaoler, keeper, officer, or other person, who shall be so examined, shall wilfully forswear or perjure himself or herself on such examination, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury.

Sheriffs and gaolers indemnified.

XII. And be it further enacted, That all and every sheriffs, gaolers, keepers, or other officers of any prison or prisons, who have done or shall do any thing in obedience to any order of the said court, or of any justice or justices of the peace, authorized by any order of the said court by virtue of the said Act or of this Act, shall be and is and are hereby indemnified for and in respect of any thing so done, and every such order shall be a sufficient discharge to such sheriffs, gaolers, keepers, and other officers respectively, for whatsoever hath been or shall be done by them respectively in obedience thereto, and shall indemnify them respectively against any escape or action for escape, or any action or actions whatsoever, which hath been or shall or may be brought against any such sheriffs, gaolers, keepers, or other officers respectively, for any thing which hath been or shall be so done as aforesaid; and such sheriffs, gaolers, keepers, and other officers respectively, shall and may plead to any such action the general issue, and give the said Act and this Act in evidence, and on production of such order or orders as aforesaid, a verdict shall be given for the defendant or defendants in any such action; and on such verdict, or if the plaintiff or plaintiffs in any such actions shall be nonsuited, or discontinue his, her, or their action, or if judgment shall be had for the defendant or defendants on demurrer, the defendant or defendants shall have treble costs.

Treble costs.

Provisional assignee may be appointed.

XIII. And be it further enacted, That in case no fit person shall be willing to accept the office of assignee of the estate and effects of any prisoner under the said Act, it shall be lawful for the said court to order such estate and effects to be assigned to an officer of the said court to be appointed for that purpose, and to be called *The Provisional Assignee of the Insolvent Debtors in England*, and such estate and effects shall be thereby vested in such provisional assignee and his successors, and shall not remain in him if he shall resign or be removed from his office,

No. XLIII.
54 Geo. III.
c. 23.

or in his heirs, executors or administrators in case of his death, but shall in every such case go to and be vested in his successor in office; but such officer shall not be bound to do any Act with respect to such estate or effects, except to convey or assign the same to any person or persons to be appointed by the said court, assignee or assignees thereof for the purposes of the said Act; but in case no person will accept the office of assignee of such estate and effects, and the same shall therefore remain vested in such provisional assignee, and it shall appear that there are or may be estate or effects which may be applicable to payment of the debts of such prisoner, it shall be lawful for the said court to make such order for the preservation and care thereof as to such court shall seem necessary, and to appoint a receiver or receivers of such estate or effects, with such allowances and giving such security for the same as to the said court shall seem fit; and such receiver or receivers shall duly account for and apply such estate and effects under the order of the said court, and shall sell and dispose of or let and set the same, if necessary, as the said court shall direct, and shall be removed as the said court shall think fit.

A recognizance to be entered into by the prisoner, instead of an engagement as under the recited Act.

XIV. And be it further enacted, That so much of the said Act as requires any such prisoner to execute an engagement for payment of the debts or demands of the persons against whom such prisoner shall be adjudged by the said court to be entitled to the benefit of the said Act, and as directs any proceeding on such engagement, shall be and the same is hereby repealed; and instead thereof the said court shall require such prisoner to enter into a recognizance to the King's Majesty for the full amount of such debts; and it shall be lawful for any creditor or creditors of such prisoner, from time to time to apply to the said court to have such recognizances put in suit, and the same shall be put in suit in pursuance of the order of the said court for that purpose, if the said court shall see fit; but all proceedings thereon shall be subject to the order of the said court, and any money which shall be recovered upon any such recognizance shall be paid and applied under the order of the said court, in the same manner as any money which might have been recovered under such engagement as aforesaid, and the judgment directed by the said Act to be entered thereupon, might have been paid or applied under the authority of the said Act; and the said court shall in all cases proceed upon such recognizance as the said court might have done under the authority of the said Act upon the engagement and judgment thereupon by the said Act required to be executed and entered as aforesaid: Provided always, That in case any proceeding shall be had upon the said recognizance, the creditor or creditors desiring the same shall be at the expense of all proceedings thereupon, but shall be at liberty to retain such expenses, and all expenses attending any application to the said court touching the same, out of any money to be recovered thereon, if the said court shall so direct; and in case any application shall be made to the said court for liberty to proceed on any such recognizance, such court shall order the costs of such application, or of any opposition thereto, to be paid as to the said court shall seem just.

Court may receive affidavits of the service of notice, or of any proceeding.

XV. And be it further enacted, That in case the said court shall think fit, it shall be lawful for the said court to receive affidavits of the service of any notice, or of any formal proceeding in the execution of the said Act or of this Act, such affidavits being sworn either before any officer of the said court appointed by the said court for that purpose, or before any master extraordinary in Chancery, or any commissioner for taking affidavits in the Court of King's Bench, Common Pleas, or Exchequer, which affidavits such officer, master, or commissioner, is hereby authorized to take; and if any person, making any such affidavit before any such officer, master, or commissioner, shall wilfully forswear and perjure himself or herself, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury.

XVI. And be it further enacted, That so much of the said Act as provides a court of appeal from the court established by virtue of the said Act, shall be and the same is hereby repealed.

No. XLIII. 54G. 3. c. 23.

No court of appeal.

XVII. And be it further enacted, That this Act shall continue in force until the first day of *November* One thousand eight hundred and eighteen, and thenceforth to the end of the then next Session of Parliament, and no longer.

Continuance of Act.

XVIII. Provided always, and be it further enacted, That this Act or any part thereof may be repealed or altered by any Act or Acts to be made in this present Session of Parliament.

Act may be repealed or altered this session.

## Schedule (A).

Notice to Creditors of hearing Petitions in Court.

'BY Order of the Court for Relief of Insolvent Debtors,
'the Petition [*or*, Petitions] of A. B. late of
'and now a prisoner in [*or*, of A. B. late of, &c.
'C. D. late of, &c. &c. &c.] will be heard on the
'Day of at

'List of the Creditors of the said A. B.

'E. F. of
'G. H. of

*or if such List shall not be added to such Notice, there may be added*:
'The Names of the Creditors of the said A. B. appear in a Schedule
'annexed to his Petition, filed in the office of the said Court at
' to which any Creditor may refer.'

## Schedule (B).

Notice to Creditors of the Examination of a Prisoner before Justices at their Quarter Sessions of the Peace, and that such justices are authorized by the Court to certify whether the Prisoner is entitled to the Benefit of the said Act.

'BY Order of the Court for the Relief of Insolvent Debtors
'A. B. late of , and now a prisoner in
'[*or, A. B. C. D.*, &c. *as the Case may be*] will be examined before the
'Justices of the Peace for , assembled at their Quarter
'Sessions of the Peace at , on the day of
' for the purpose of determining whether the said A. B.,
'is, [*or*, the said A. B. C. D , &c. are] entitled to the Benefit of the Act
'for the Relief of Insolvent Debtors; and all Creditors of the said A. B.
'[*or*, of the said A. B. C. D., &c *as the Case may be*] are required to
'attend accordingly, if they shall think fit.'

## [ No. XLIV. ] 56 George III. c. 102.—An Act to amend the Act of the Fifty-third Year of his present Majesty, intituled *An Act for the Relief of Insolvent Debtors in* England; and to give further Powers to the Court appointed by the said Act.—[*1st July* 1816.]

WHEREAS an Act passed in the fifty-third year of His present Majesty's reign, intituled *An Act for the Relief of Insolvent Debtors in* England; and it is expedient to amend the said Act, and to distinguish between the cases of such insolvent debtors who shall have been guilty of gross injustice towards their creditors, and the cases of those who shall not have so conducted themselves; Be it therefore enacted and declared by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and

53 George III. c. 102.

No. XLIV.
56 Geo. III.
c. 102.

In case prisoner has acted with gross injustice, &c. he shall not be entitled to his discharge, unless the whole of the creditors consent.

Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, if it shall appear to the court established by virtue of the said recited Act, upon the examination of any prisoner, or otherwise, that such prisoner has acted with gross injustice towards his or her creditor or creditors, either in contracting any debts, or entering into any engagements, without any fair prospect or probable means of paying such debts, or fulfilling such engagements, or by squandering or otherwise improperly disposing of his or her monies, effects, or other property, which he or she might have applied in paying such debts or fulfilling such engagements, either wholly or in part, such prisoner shall not be entitled to his or her discharge by virtue of the said recited Act, unless the whole of the creditors of such prisoner shall consent to his or her discharge, or such prisoner shall have been confined within the walls of any prison for the space of five years, to be computed from the time when such prisoner shall have applied for his or her discharge

Prisoner to make a declaration, that he is willing to be examined touching the justice of his conduct.

II. And be it further enacted, That in every notice directed to be given by the said recited Act, by any prisoner, to his or her creditor or creditors, such prisoner shall declare that he or she is ready and willing to submit to be fully examined touching the justice of his or her conduct to his or her creditor or creditors.

Prisoner not to be examined by justices out of session.

III. And be it further enacted, That from and after the passing of this Act it shall not be lawful for the said court to order that any prisoner shall be examined at any session of the peace for the counties of *Middlesex* or *Surrey*, or for the cities or liberties of *London* and *Westminster*, or by any one or more justice or justices of the peace, out of session, for any county, riding, division or place whatsoever.

Quarter sessions shall examine prisoner;

IV. And be it further enacted, That the court established by virtue of the said recited Act, and the courts of quarter sessions, shall examine each and every prisoner touching the justice of his or her conduct towards his or her creditor or creditors.

and declare in open court whether he has acted with injustice or not.

V. And be it further enacted, That the courts of quarter sessions for any county, riding, division or place, at which any prisoner shall be examined, shall declare in open court whether such prisoner has acted with gross injustice towards his or her creditor or creditors, or not, and shall also certify their determination thereon to the court established by virtue of the said recited Act.

Prisoner not to be examined but at the quarter session of which he shall have given notice to his creditors.

VI. Provided always, and be it further enacted, That no prisoner hereafter shall be entitled to be examined under the provisions of the said recited Act at any quarter sessions except at such quarter sessions for such county, division, riding, or place, and at such time, whereof he shall have given notice to each and every of his or her creditors; and no prisoner, who shall not appear to be examined pursuant to such notice, shall be brought up before any court to be examined without having given the like notice at least six months previous to the time at which he or she shall appear in order to be examined.

Not to repeal former Acts, except as herein excepted. 54 George III. c. 23.

VII. Provided always, That nothing in this Act contained shall extend to repeal or alter any of the powers or provisions of the said recited Act, or of another Act passed in the fifty-fourth year of his Majesty's reign, intituled *An Act to amend an Act of the Fifty-third Year of his Majesty's Reign for the Relief of Insolvent Debtors in* England, further than any of the powers or provisions in the said Acts are hereby expressly repealed or altered respectively.

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[ No. XLV. ] 57 George III. c. 101.—An Act to continue an Act intituled, An Act further to extend and render more effectual certain Provisions of an Act passed in the twelfth Year of the Reign of his late Majesty King *George* the First, intituled An Act to prevent frivolous and vexatious Arrests; and of an Act passed in the fifth Year of the Reign of his

Majesty King *George* the Second, to explain, amend and render more effectual the said former Act, and of two Acts passed in the nineteenth and forty-third Years of the Reign of his present Majesty extending the provisions of the said former Acts.—[11*th July*, 1817.]

No. XLV. 57 Geo. III. c. 101.

[ No. XLVI. ] 59 George III. c. 129.—An Act to continue in force until the expiration of three calendar months after the commencement of the next Session of Parliament, three Acts of his present Majesty for the Relief of Insolvent Debtors in England.—[12*th July*, 1819.]

[ No. XLVII. ] 59 George III. c. 130.—An Act to continue the several Acts for the Relief of Insolvent Debtors in Ireland, until the first day of *June* 1820.—[12*th July* 1819.]

[ No. XLVIII. ] 1 George IV. c. 3.—An Act for the removal of doubts as to the continuance of three Acts for the Relief of Insolvent Debtors in England.—[6*th June* 1820.]

[ No. XLIX. ] 1 George IV. c. 97.—An Act to revive and to continue for one year the several Acts for the Relief of Insolvent Debtors in Ireland.—[24*th July* 1820.]

[ No. L. ] 1 George IV. c. 119.—An Act for the Relief of Insolvent Debtors in *England;* to continue in force until the first day of *June* One thousand eight hundred and twenty-five.—[26*th July* 1820.]

WHEREAS notwithstanding the Acts which have from time to time passed for the relief of insolvent debtors, and the discharge of many prisoners for small debts by charitable donations, great numbers of persons generally remain confined for debt in different prisons in *England;* and it is therefore expedient to make a permanent provision for the relief of insolvent debtors, in *England*, under certain restrictions: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, it shall be lawful for his Majesty to appoint a chief and two other commissioners, being barristers at law of ten years' standing at the least, to be his Majesty's commissioners for the relief of insolvent debtors, and to preside in a court to be called *The Court for Relief of Insolvent Debtors;* which shall be a court of record for the purposes of this Act; and that when and as soon as the said respective appointments shall have been notified in the *London Gazette*, such court shall be deemed to be fully constituted and established; and that such court shall have power to appoint a chief clerk, a provisional assignee, a receiver, and such other officers as the Lord Chancellor, and the Chief Justices of the Courts of King's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall judge to be necessary, and in such manner as they shall direct; and that the said court, or any of the commissioners acting under the powers of this Act, may adjourn any meeting under this Act as often as the said

Three barristers to be appointed commissioners.

Court to be a court of record.

Appointment of officers.

Power of the court.

No. I. 1 Geo. IV. c. 119.

court or commissioners shall think necessary, and may administer oaths and examine all parties and witnesses upon oath for the purposes of this Act, and shall have such like and the same powers of compelling the attendance of witnesses, and of requiring and compelling the production of books, papers, and writings, as now are possessed by any of the superior courts at *Westminster*, and to order any prisoner who shall have petitioned for relief under this Act, or any prisoner who shall be a necessary and material witness in any matter pending in the said court, or before any commissioner thereof, to be brought before the said court or such commissioner as often as the said court or such commissioner shall think fit; and that the said court shall also have the power of committing all persons guilty of any contempt to the said court, to the prison of the King's Bench, or to the common gaol of any county in which such person shall be, and the power of fining in a summary way, or removing any of the officers of the said court who shall be guilty of any negligence, wilful or unnecessary delay, or other misconduct whatsoever: Provided always, that the said court shall not have the power of awarding costs against any person or persons whomsoever, except in such cases only where such costs are hereinafter expressly mentioned and permitted to be awarded by this Act: Provided always, that nothing herein contained shall extend to the compelling the attendance of any witness, unless the party on whose behalf such witness shall be required to attend shall have previously tendered to such witness such allowance for expenses for his attendance as in the judgment of the said court or of a commissioner shall appear to be reasonable.

Court not to award costs but in certain cases.

Witnesses shall not be compelled to attend, unless expenses are previously tendered.

II. And be it further enacted, That the said court shall sit for the dispatch of business twice in every week throughout the year, and one at least of the said commissioners shall attend for such purpose.

Sittings of the court twice a week.

III. And be it further enacted, That no fee or gratuity shall be received or taken by the said court, or any officer thereof, of or from any person whomsoever, on any pretence whatsoever, except such as shall at any time be specified in a list thereof, to be signed by the commissioners of the said court, a copy of which list shall always be exposed to view in the office of the said court.

No fees to be taken except such as shall be established.

IV. Provided always, and be it further enacted, That when and as soon as the said court shall be fully constituted and established, it shall be lawful for any person in that part of the United Kingdom called *England*, who shall be in actual custody upon any process whatsoever, for or by reason of any debt, damage, costs, sum or sums of money, or for or by reason of any contempt of any court whatsoever for non-payment of any sum or sums of money, or of costs, taxed or untaxed, either ordered to be paid or to the payment of which such persons would be liable in purging such contempt, or in any manner in consequence of or by reason of such contempt, at any time within the space of fourteen days next after such court shall have been so fully constituted and established, or within the space of fourteen days next after the commencement of such actual custody, or within such further time as the said court shall think reasonable, to apply by petition in a summary way to the court to be established by virtue of this Act, for his or her discharge from such confinement, according to the provisions of this Act; and in such petition shall be stated the place wherein such prisoner shall be then confined, the time when such prisoner was first charged in custody, together with the name or names of the person or persons at whose suit or prosecution he or she shall, at the time of presenting such petition, be detained in custody, and the amount of the debts and sums of money, and also of such costs as aforesaid, so far as the amount of such costs is ascertained, for which such prisoner shall be so detained; and shall pray to be discharged from custody, and to have future liberty of his or her person against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be or claim to be creditors of such prisoner at the time of presenting such petition; which petition shall be subscribed by the said prisoner, and shall forthwith be filed in the said court; and

Persons in custody for debt, &c. may apply by petition in a summary way for discharge.

Petition to state debts and other particulars.

Petition to be filed.

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such prisoner shall at the time of subscribing such petition duly execute a conveyance and assignment, in such manner and form as the said court shall direct, of all the estate, right, title, interest and trust of such prisoner to all the real and personal estate and effects of every such prisoner, except to the wearing apparel, bedding, and other such necessaries of such prisoner and his or her family not exceeding in the whole the value of twenty pounds, so as to vest all such real and personal estate and effects in the provisional assignee of the said court, subject to a proviso that in case such prisoner shall not obtain his discharge by virtue of this Act, such conveyance and assignment shall, from and after the dismission of the petition of such prisoner praying for his discharge, be null and void to all intents and purposes.

Prisoner to make an assignment of his estate, &c. except wearing apparel, &c. not exceeding the value of 20*l.*

V. Provided always, and be it further enacted, That the said court shall and may order and direct such provisional assignee or such assignee or assignees as are hereinafter mentioned, to pay out of the said estate and effects before mentioned to the said prisoner such allowance for his or her support and maintenance during such prisoner's confinement in actual custody as to the said court shall seem reasonable and fit.

Court may order an allowance for support of prisoner during confinement.

VI. Provided always, and be it further enacted, That such prisoner shall, within the space of fourteen days next after such petition shall have been filed, or within such further time as the said court shall think reasonable, deliver into the said court a schedule containing a full and true description of all and every person and persons to whom such prisoner shall be then indebted, or who to his or her knowledge or belief shall claim to be his or her creditors, together with the nature and amount of such debts and claims respectively, distinguishing such as shall be admitted from such as shall be disputed by such prisoner, and also a full, true, and perfect account of all the estates and effects, real and personal, in possession, reversion, remainder, or expectancy; and also of all places of benefit or advantage, whether the emoluments of the same arise from fixed salaries or from fees; and also of all pensions or allowances of the said prisoner in possession or reversion, or held by any other person or persons for or on behalf of the said prisoner, or of and from which the said prisoner derives or may derive any manner of benefit or advantage; and also all rights and powers of every nature and kind whatsoever, which such prisoner, or any other person or persons in trust for such prisoner, or for his or her use, benefit or advantage in any manner whatsoever, shall be seised or possessed of, or interested in, or entitled unto, or which such prisoner, or any person or persons in trust for him or her, or for his or her benefit, shall have any power to dispose of, charge or exercise for the benefit or advantage of such prisoner at the time of presenting such petition; together with a full, true, and perfect account of all debts at such time owing to such prisoner, or to any person or persons in trust for him or her, or for his or her benefit or advantage, either solely, or jointly with any other person or persons; and the names and places of abode of the several persons from whom such debts shall be due or owing, and of the witnesses who can prove such debts, so far as such prisoner can set forth the same; and such schedule shall also fully and truly describe the wearing apparel and bedding of such prisoner, and his or her family, and the working tools and implements, and other such necessaries, not exceeding in the whole the sum of twenty pounds, which may be excepted by such prisoner from the operation of this Act, together with the values of such excepted articles respectively; and the said schedule shall be subscribed by such prisoner, and shall forthwith be filed in the said court.

When petition is filed, prisoner to deliver in a schedule of debts, property, &c.

VII. And be it further enacted, That when the said court shall adjudge any prisoner to be entitled to his discharge, such court shall appoint a proper person or proper persons to be assignee or assignees of the estate and effects of such prisoner for the purposes of this Act; and when such assignee or assignees shall have signified to the said court their acceptance of the said appointment, every such prisoner's estate, effects, rights, and powers vested in such provisional assignee as afore-

Court may appoint assignees.

Their acceptance to be signified to the court.

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said, shall immediately be assigned by such provisional assignee to such assignee or assignees, in trust for the benefit of such assignee or assignees and the rest of the creditors of every such prisoner, in respect of or in proportion to their respective debts, according to the provisions of this Act; and in case any prisoner who shall be discharged by virtue of this Act shall be entitled to any copyhold or customary estate, the assignment to such assignee or assignees as aforesaid shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for the assignee or assignees of the estate and effects of such prisoner, to surrender or convey such copyhold or customary estate to any purchaser or purchasers of any such copyhold or customary estate from such assignee or assignees, as the said court shall direct, and the rents and profits thereof shall be in the mean time received by such assignee or assignees, for the benefit of the creditors of such prisoner, without prejudice nevertheless to the lord or lords of the manor of which any such copyhold or customary estate shall be holden; and such assignee or assignees is and are hereby fully empowered to sue from time to time, as there may be occasion, in his, her, or their own name or names, for the recovery, obtaining, and enforcing any estate, effects, or rights of any such prisoner; and also to execute any trust or power vested in or created for the use or benefit of any such prisoner, but in trust for the benefit of such assignee or assignees and the rest of the creditors of every such prisoner, according to the provisions of this Act, and to give such discharge and discharges to any person or persons who shall respectively be indebted to such prisoner, as may be requisite; and every such assignment as aforesaid, whether to a provisional or other assignee or assignees, shall be entered on the proceedings of the said court, and an office copy of every such assignment shall be sufficient evidence thereof in all courts, and to all intents and purposes; and every such assignee or assignees shall, with all convenient speed, after his, her, or their accepting such assignment as aforesaid, use his, or her, or their best endeavours to receive and get in the estate and effects of every such prisoner, and shall, with all convenient speed, make sale of all the estate and effects of such prisoner vested in such assignee or assignees; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion, or expectancy, the same, within the space of two months after such assignment and conveyance, or within such other time as the said court shall direct, shall be sold by public auction, in such manner, and at such place or places as the major part of the creditors of such prisoner entitled to the benefit thereof, who shall assemble together on any notice in writing published in the *London Gazette*, and in some daily paper printed and published in *London*, or within the bills of mortality if the prisoner before his or her going to prison resided in *London* or within the bills of mortality, and if such prisoner resided elsewhere, then in some printed newspaper which shall be published and generally circulated in or near the county, riding, division, city, town, liberty, or place in which such prisoner resided before he or she was committed to prison, thirty days before any such sale shall be made, shall, under his, her, or their hand or hands, approve; and every such assignee or assignees, at the end of three months at the farthest from the time of his, her, or their accepting any such assignment or conveyance as aforesaid, and so from time to time as occasion shall require, shall make up an account of such prisoner's estate, and make oath in writing, before an officer of the said court to be appointed for that purpose, or before one or more justice or justices of the peace of the county, riding, division, city, town, liberty, or place in which such assignee or assignees shall reside, that such account contains a fair and just account of the estate and effects of every such prisoner got in by or for such assignee or assignees, and of all payments made in respect thereof, and that all payments in every such account charged were truly and *bonâ fide* made and paid, which account so sworn shall be filed with the proper officer of the said

Copyhold or customary estates to be assigned.

Sale of estate and effects of the prisoner to be immediately made.

Creditors to meet 30 days before sale.

At the end of three months dividends to be made:

court; and if it shall appear that such assignee or assignees has in his or their hands any balance wherewith a dividend may be made amongst the creditors of such prisoner, whose debts are expressed in the schedule delivered by such prisoner, such assignee or assignees shall forthwith declare the amount of the balance in his hands, wherewith such dividend may be made; and notice of the making of every such dividend shall be published, in like manner as a meeting of creditors is hereinbefore directed to be published, thirty days at least before such dividend shall be made; and every creditor whose debts shall be stated admitted in the prisoner's schedule shall be allowed to receive a share of such dividend, unless such prisoner or his or her assignee or assignees, or any other creditor of such prisoner, shall object to any such debt, in which case the same shall be examined into by the said court, who shall have full power for that purpose to require and compel the production of all books, papers, and writings which may be necessary to be produced, as well by the person or persons claiming such debt, as by the prisoner against whom the same shall be claimed, or his or her assignee or assignees, and to examine all such persons and their witnesses on oath, as the nature of the case may require, and to take all other measures necessary for the due investigation of such claim; and the decision of the said court upon such claim shall be conclusive with respect to any dividend of the effects of such prisoner, under the provisions of this Act.

Notice of which shall be given.

Debt to be proved.

VIII. And whereas prisoners discharged by virtue of this Act may be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof, for payment of their debts, may be very prejudicial to them, and deprive them of the means of subsistence which they might otherwise have after payment of their debts; and it may be proper in some cases to authorize the raising of money by way of mortgage, for payment of the debts or part of the debts of a prisoner discharged by virtue of this Act, and defraying the expenses attending the execution of this Act, instead of selling the property of such prisoner for such purposes; be it enacted, That in all such cases it shall be lawful for the said court to take into consideration all circumstances affecting the property of any prisoner who shall be discharged by virtue of this Act, either at the time of the discharge of such prisoner or at any subsequent time; and if it shall appear to the said court that it would be reasonable to make any special order touching the same, it shall be lawful for the said court so to do, and to direct that such property as it may be expedient not to sell, or not to sell immediately, according to the provisions of this Act, shall not be so sold, and from time to time to order and direct in what manner such property shall be managed for the benefit of the creditors of such prisoner, until the same can be properly sold, or until payment of all such creditors according to the provisions of this Act, and to make such order touching the sale or disposition of such property as to the said court shall seem reasonable, considering the rights of the creditors of such prisoner to payment of their demands, and the future benefit of such prisoner after payment of his or her debts, and upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just; and if it shall appear to the said court that the debts of such prisoner can be discharged by means of money raised by way of mortgage on any property of such prisoner, instead of raising the same by sale, it shall be lawful for the said court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such prisoner, in such manner as may be most consistent with the interests of such prisoner in any surplus of his or her effects after payment of such debts.

Court to give directions as to the disposal of property in the cases herein mentioned.

Property may be mortgaged, if more beneficial.

IX. And be it further enacted, That in case such prisoner, or any of his or her creditors, or the said court, shall at any time be dissatisfied with the account of any assignee or assignees so rendered upon oath as

In case prisoner shall be dissatisfied with the assignee's

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aforesaid; or in case any such assignee or assignees shall neglect to render such account, or shall neglect to dispose of the property or collect the effects of such prisoner, or shall in any manner waste or mismanage the estate or effects of such prisoner, or neglect to make a due distribution thereof; it shall be lawful for such court, or of any such creditor as aforesaid, to require such assignee or assignees to render such account on oath, as is directed by this Act, if not before rendered, and to examine any account so rendered, and to inquire into any waste, mismanagement, or neglect of the estate or effects of such prisoner, and direct a proper administration thereof, and ascertain the produce of such estate and effects, to be divided amongst the creditors of such prisoner, and direct the distribution thereof accordingly; and to require and compel the production of all books, papers, and writings necessary for such purposes, and to examine all parties, and their writings, on oath, as the case may require; and to take all such measures as shall be necessary for the compelling and rendering of such account, and the due investigation thereof, and the proper disposition and distribution of the effects of such prisoner, according to this Act, and to award costs against any of the parties, as justice shall require; and the decisions of the said court upon all such matters shall be final and conclusive.

account, or if they neglect to do their duty, court may direct inquiry.

Books to be produced.

Creditor for annuity may receive dividend, &c.

X. Provided always, and be it further enacted, That all and every creditor and creditors of any such prisoner, for any sum and sums of money payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever, may be and shall be entitled to be admitted a creditor or creditors, and shall be entitled to receive a dividend or dividends of the estate of such prisoner, in such manner and upon such terms and conditions as such creditor or creditors would have been entitled unto by the laws now in force if such prisoner had become bankrupt; the amount upon which such dividend shall be calculated, and the terms and conditions on which the same shall be received, being first settled by the said court; and without prejudice in future to their respective securities, otherwise than as the same would have been affected by a proof made in respect thereof by a creditor under a commission of bankrupt, and a certificate obtained by the bankrupt under such commission.

Suit not to be commenced without consent of majority of creditors.

XI. Provided, and be it also enacted, That no suit in law be proceeded in further than an arrest on mesne process, or suit in equity be commenced by any assignee or assignees of any such prisoner's estate and effects, without the consent of the major part in value of the creditors of such prisoner, who shall meet together pursuant to a notice to be given at least fourteen days before such meeting in the *London Gazette*, or other newspaper which shall be published in the neighbourhood of the last residence of such prisoner, for that purpose, and without the approbation of one of the commissioners of the said court.

Where persons claiming the benefit of Act are seised of lands, and have power to lease, like power extended to assignee.

XII. And whereas many persons who may claim the benefit, or be brought within the operation of this Act, are seised and possessed of lands, tenements, and hereditaments, to hold for the term of their natural lives, with power of granting leases and taking fines, reserving small rents on such estate, for one, two, or three lives, in possession or reversion, or for some number of years determinable upon lives, or have powers over such real or personal estate which such prisoners could execute for their own advantage, and which said powers ought to be executed for the benefit of the creditors of such prisoners; be it therefore enacted, That in every such case all and every the powers of leasing such lands, tenements and hereditaments, and all other such powers as aforesaid over such real or personal estates, which are or shall be vested in any such prisoner as aforesaid, shall and are hereby vested in the assignee or assignees of the real and personal estate of such prisoner, by virtue of this Act, so far as the prisoner could by law vest such power in any person to whom he might lawfully have conveyed

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such property, to be by such assignee or assignees executed for the benefit of all and every the creditors of such prisoner as aforesaid.

Assignees, after giving notice in Gazette, &c. may make composition for debts owing to prisoner.

XIII. And be it further enacted, That it shall and may be lawful at all times hereafter for any assignee or assignees of the estate or effects of any prisoner, by and with the consent of the major part in value of the creditors of such prisoner, who shall be present at a meeting to be had on fourteen days' notice previously given for the purpose hereafter mentioned in the *London Gazette*, if the prisoner was in custody in *London* or within the weekly bills of mortality, and if not, then also in some newspaper which shall be published in the county, city, or place in or near which such prisoner shall have been in such actual custody, and with the approbation of one of the commissioners of the said court, to make compositions with any debtors or accountants to such prisoner, where the same shall appear necessary or reasonable, and to take such reasonable part of any such debts as can upon such composition be gotten in full discharge of such debts and accounts; and to submit to arbitration any difference or dispute between such assignee or assignees and any person or persons, for or on account or by reason of any matter, cause or thing relating to the estate and effects of such prisoner; and every such assignee or assignees is and are hereby indemnified for what they shall fairly do in the premises in pursuance of this Act.

Court may appoint new assignees in case of death or removal.

XIV. And be it further enacted, That in case any assignee so appointed shall be unwilling to act, or in case of the death or incapacity or misconduct of any such assignee, it shall be lawful to and for any creditor of such prisoner to apply to the said court to appoint a new assignee or assignees, with like powers and authorities as are given by this Act to the original assignee or assignees; and the said court shall have power to remove such assignees, and to appoint such new assignee or assignees, and to oblige any assignee who shall be removed, and the heirs, executors, administrators and assigns of any deceased assignee, to account for and deliver up all such estate and effects, books, papers, writings, deeds, and all other evidences relating thereto, as shall remain in his or her hands, to be applied for the purposes of this Act, and the decision of the said court thereupon shall be final and conclusive; and from and immediately after such appointment, all the estate, effects, rights and powers of the said prisoner, vested either in the provisional assignee or such assignee or assignees as aforesaid, shall become and the same are hereby vested in such new assignee or assignees.

When assignees shall not deliver over balance of property, court may order them to be arrested, &c.

XV. And be it further enacted, That in case any such assignee or assignees, or the heirs, executors, or administrators of any deceased assignee or assignees, shall not deliver over any part of such estate or effects, or pay the balance of the produce of any such estate or effects found to be in the hands of such assignee or assignees, or of such heirs, executors, or administrators as aforesaid, according to the tenor of this Act, it shall be lawful for the court to be established by virtue of this Act to order the person or persons so offending to be arrested and committed to the county gaol nearest to the place where they shall reside, there to remain, without bail or mainprize, until such person or persons shall have fulfilled the duty required by this Act, or until this court shall make other order to the contrary.

Court to give notice in the London Gazette, &c. to creditors after petition and schedule shall have been filed.

XVI. And be it further enacted, That the said court shall forthwith, after such petition and schedule shall have been respectively filed in the said court, cause notice thereof to be given to the creditor or creditors at whose suit such prisoner shall be detained, or the attorney or agent of such creditor or creditors, and to the other creditors named in the schedule of such prisoner, or such of them as the said court shall think fit, and to be inserted in the *London Gazette*, and also, if the said court shall think necessary, in some other newspaper or newspapers, and shall appoint a day and place for the hearing of the matter of such petition; and in case such notice as the said court shall direct shall have been given by any creditor of his or her intention to oppose such prisoner's discharge, it shall and may be lawful both for the said creditor and any other of the creditors of the said prisoner, to oppose such prisoner's dis-

Creditors may oppose prisoner's discharge, &c.

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charge, and for that purpose to put such questions to such prisoner and examine such witnesses as the said court shall think fit, touching the matters contained in such petition and schedule, and touching such other matters as the said court shall be of opinion that it may be fit and proper to enquire into, in order to the due execution of this Act; but no creditor shall examine or oppose the discharge of such prisoner, until he shall make oath or affidavit of his debt, or otherwise satisfy the court of his right to oppose such prisoner's discharge, if required so to do by such prisoner: Provided always, that at such hearing, any creditor or creditors so opposing may require, or the court may, if it shall deem it necessary, order that it shall be referred to an officer of the said court, to investigate the accounts of the said prisoner, and to examine into the truth of the schedule of such prisoner, and to report thereon to the said court; and the said court may at such hearing proceed on the other matters in opposition to the discharge of such prisoner, or adjourn the said hearing thereof until such officer shall have so made his report; and in case such prisoner shall not be opposed, and the court shall be satisfied with the said schedule, and that such prisoner is entitled to the benefit of this Act, then and in such case such court shall so declare, and shall order such prisoner to be discharged from custody forthwith, or so soon as such prisoner shall have been in custody at the suit of one or more of the persons who were creditors at the time of petitioning, or who have since become creditors in respect of debts then growing due, for such period or periods not exceeding six months in the whole, as the said court shall direct, to be computed from the time of filing the petition of such prisoner, and shall in such order specify the several debts of the said prisoner to which such charge shall apply; and such discharge shall extend to all process issuing from any court for any contempt of any court, ecclesiastical or civil, by non-payment of money or of costs or expenses in any cause or proceeding in any court ecclesiastical or civil; and in case it shall appear to such court, that the opposition to the petition of such prisoner, by any of such creditors is frivolous and vexatious, that then it shall and may be lawful for such court to award such costs to such prisoner as shall appear unto the court to be just and reasonable.

Accounts of prisoner may be referred to an officer of the court.

If court satisfied with schedule, prisoner to be discharged forthwith, or so soon as he shall have been in custody six months.

When it shall appear to the court that such prisoner shall have destroyed books or acted fraudulently, &c. term of imprisonment may be extended to three years.

XVII. And be it further enacted, That in case it shall appear to the said court that such prisoner shall, with intent to conceal the state of his affairs or to defeat the objects of this Act, have destroyed or otherwise wilfully prevented or purposely withheld the production of any books, papers, or writings, relating to such of his affairs as are subject to investigation under this Act; or shall have kept or caused to be kept false books, or made false entries or have wilfully and fraudulently altered or falsified any such books, papers, or writings; or shall in any respect have been guilty of fraud, in discharging or concealing any debt due to or from the said prisoner; or shall have fraudulently made away with, charged, mortgaged, or concealed any part of his or her property of what kind soever, either before or after the commencement of his or her said imprisonment, for the purpose of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of the said creditors; then it shall and may be lawful for the said court to order that such prisoner shall not be discharged out of custody by virtue of this Act, or receive or be entitled to any protection under the same, until he shall have been in custody at the suit of some one or more of the persons who were creditors at the time of his petitioning the said court, or had since become creditors in respect of debts then growing due, and from whose claims he shall be discharged by the judgment of the said court, for such period or periods, not exceeding three years in the whole, as the said court shall direct, to be computed from the filing of such prisoner's petition to the said court.

When prisoners shall have contracted debts fraudu-

XVIII. And be it further enacted, That in case it shall appear to the said court that any such prisoner shall have contracted any of his debts fraudulently, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of pay-

ing the same, or shall be indebted for damages recovered in any action for criminal conversation, or for seducing the daughter of the plaintiff in such action, or in any action for a malicious prosecution, or for any other malicious injury, or shall have put any of his or her creditors to any unnecessary expense, by any vexatious or frivolous defence to any suit for recovering the same, it shall and may be lawful for such court to order that such prisoner shall not be discharged out of custody by virtue of this Act, or be entitled to any benefit or protection under the same, as to any debt so contracted, or as to any damages so incurred, or as to any debt for recovering of which he shall so have occasioned unnecessary expense as aforesaid, until he shall have been in custody at the suit of the creditor or creditors whose debts shall have been so contracted or damages so incurred, or who shall have been so put to expense for such period or periods, not exceeding two years in the whole, as the said court shall direct, to be computed as aforesaid.

lently, &c. or put their creditors to any unnecessary expense, the court may extend time of imprisonment to two years.

XIX. Provided always, and be it enacted, That in all cases where such prisoner shall not be ordered to be discharged forthwith, but to be liable to imprisonment at the suit of his creditor or creditors, or of any or either of them, it shall be lawful for the said court, on the application of such prisoner, to order the creditor or creditors at whose suit such prisoner shall be imprisoned, to pay to such prisoner such sum or sums of money, not exceeding the rate of four shillings by the week in the whole, at such times and in such manner as the said court shall direct; and that on failure of payment thereof as directed by the said court, such prisoner shall be forthwith discharged from custody at the suit of the creditor or creditors so failing to pay the same.

Court may order creditors to pay prisoners any sum not exceeding 4*s.* per week.

XX. And be it further enacted, That the justices of the peace for every county, riding, city, cinque port, ancient town or members, division, liberty, or place, assembled at the general quarter sessions or general sessions of the peace, or at any adjournment thereof, and from time to time afterwards as occasion may require, shall and may in open court appoint as many fit persons as they shall judge sufficient, to be examiners for the purposes of this Act, within their respective jurisdiction.

Justices of the peace to appoint in their districts examiners, &c.

XXI. And be it further enacted, That the court established by virtue of this Act shall and may in all cases, as they shall think fit, order and direct that any prisoner, instead of being brought before such court for final examination, shall be examined by the justices of the peace in open court, at their general or general quarter sessions of the peace, or at some adjournment thereof, for any county, riding, city, cinque port, ancient town or member, division, liberty, or place, who are hereby respectively empowered and required to take such examination pursuant to such order; and the said court shall forthwith cause twenty-one days' notice to be given in the *London Gazette*, and in such one or more newspapers as the said court shall direct, of the day on which and the place where the said prisoner shall be brought before the said justices for his examination; and such prisoner shall, according to such order, be carried before such justices, for which such order shall be a sufficient warrant; and in case any one creditor shall give two days' notice to such prisoner of his or her intention to oppose such prisoner's discharge, then it shall and may be lawful for such creditor, or for any other creditor to oppose such prisoner's discharge, and to put to such prisoner all such questions as to such justices shall appear relevant and proper, and such prisoner shall answer, upon oath, all such questions; and if it shall appear to such justices to be expedient and proper that the accounts of such prisoner, and the matters of the schedule of such prisoner, should be further investigated and examined, then it shall be lawful for such justices to adjourn the hearing of the petition of such prisoner to some subsequent general or quarter or adjourned sessions, and at the request of any one or more creditors to order and direct that some one of the examiners appointed by the said justices by virtue of this Act shall examine into the matters of the said schedule, and certify his opinion thereon to the said justices at such general or quarter or

The court may direct final examinations to be taken at quarter sessions.

Notice to be given in the London Gazette, &c.

Prisoner's discharge may be opposed.

Schedule may be further investigated.

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Examiner to receive 1*l.* for every meeting.

Justices to certify to the court if prisoner is entitled to discharge; but if prisoner shall have acted fraudulently, &c. justices shall adjudge accordingly.

adjourned sessions to which the hearing of such petition shall have been adjourned, and of which adjournment all parties interested shall take notice; and that such examiner shall and may receive for his trouble the sum of one pound and no more for every meeting under such order, to be paid for by the person or persons requiring the same; and in case it shall appear to the said justices upon such examination, or by evidence, that such prisoner is entitled to the benefit of this Act, then the said justices shall so declare and adjudge, and shall certify the same to the court to be established by virtue of this Act; and in case it shall appear to the said justices by such examination, or by evidence, that such prisoner shall have contracted any debts, against which he shall seek to be discharged, fraudulently, or without any reasonable or probable expectation, at the time of contracting the same, of being able to pay the same, or shall, with intent to conceal the state of his affairs, or to defeat the objects of this Act, have destroyed or otherwise wilfully prevented the production of any books, papers, or writings, relating to such of his affairs as are subject to investigation under this Act, or shall have kept, or cause to be kept, false books or made false entries, or have wilfully and fraudulently altered or falsified any such books, papers, or writings, or shall in any respect have been guilty of fraud, in contracting, discharging, or concealing any debt due from the said prisoner to any of his or her creditors, or shall have fraudulently made away with, charged, mortgaged, or concealed any part of his or her property, of what kind soever, either before or after the commencement of his or her said imprisonment, for the purpose of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of the said creditors, or that such prisoner shall have put any of such creditors as shall have proved their debts to unnecessary expense, by any vexatious or frivolous defence, or improper delay in any suit for recovering the same, or that such prisoner shall have wilfully or fraudulently omitted any effects or property whatsoever, to the value of not less than twenty pounds in the whole, in the schedule which the said prisoner shall first have delivered in to the said court, then such justices shall so declare and adjudge, and shall also declare and adjudge in like manner, and subject to the same limitations as are hereinbefore mentioned and imposed in such cases upon the court to be established by virtue of this Act, for what period of time such prisoner shall remain in actual custody before such prisoner shall be discharged from custody by virtue of this Act; and such justices shall forthwith certify the same to the court to be established by virtue of this Act; and thereupon such court shall accordingly order and direct, that the said prisoner shall be discharged from custody when and so soon as he shall have been in such actual custody for the full period of time expressed in such certificate as aforesaid.

After prisoner's committal, affidavits of creditors may be received in opposition to discharge, except in Surrey, Middlesex, or the city of London.

XXII. And be it further enacted, That in case any such prisoner, after his commitment to such actual custody as aforesaid, shall be removed by any writ of *Habeas Corpus* or otherwise, from the place of such actual custody, or shall be rendered in discharge of his bail, it shall and may be lawful for the said court to receive the affidavits of any creditor or creditors, or of any other person or persons, in opposition to the discharge of such prisoner under this Act; and also, if such court shall think fit, to permit interrogatories to be filed for the examination or cross-examination of every person making or joining in such affidavit, and also to stay the discharge of every such prisoner until such interrogatories shall be fully answered, to the satisfaction of such court: Provided always, that this shall not extend to any prisoner who shall have been in such actual custody, or arrested, within the counties of *Middlesex* or *Surrey*, or the city of *London*.

Order of court for discharge of prisoner to be final, unless obtained upon false evidence, &c.

XXIII. And be it further enacted, That such order of the said court for the discharge of such prisoner shall in all cases be final and conclusive, and shall not be reviewed by the said court, unless such court so making the said order shall, after such order made, see good and sufficient cause to believe that such adjudication, and the order founded

thereon, shall have been made on false evidence, or otherwise fraudulently obtained; in which case it shall and may be lawful for any creditor of the said prisoner, to apply to the said court to direct the said prisoner to be brought again before them; and it shall and may be lawful for the said court, upon due notice to be given by such creditor, to rehear the said matter, and make such further order as to them shall seem fit in execution of the powers in this Act contained: Provided always, that in case such court, or such justices of the peace as aforesaid, shall entertain any doubt, touching any matter alleged against such prisoner at the time of his final examination before mentioned, to prevent his or her discharge, or touching the examination of such prisoner, it shall be lawful for such court, or such justices, to remand such prisoner to custody, and afterwards to cause such prisoner to be again brought up for examination, as often as to the said court or the said justices shall seem fit.

Prisoner may be remanded, and afterwards brought up for examination.

XXIV. And be it further enacted, That if any prisoner who shall apply for his or her discharge, under the provisions of this Act, or any other persons taking an oath under the provisions of this Act, shall wilfully forswear and perjure himself or herself in any oath to be taken under this Act, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury.

In case of false swearing, prisoner subject to punishment inflicted for perjury.

XXV. And be it further enacted, That when any order for the discharge of any prisoner shall be made, the said court may also order that a judgment shall be entered up against such prisoner in some one of the superior courts of *Westminster*, in the name of the assignee or assignees of such prisoner, or of such provisional assignee as aforesaid, if no other assignee shall then have been appointed and shall have accepted such office, for the amount of the debts of such prisoner which shall at the time of such order remain due and unpaid to the said creditors, and from which such prisoner shall be discharged by such order; and the said prisoner shall execute a warrant of attorney to authorize the entering up such judgment; and such judgment shall have the force of a recognizance; and such order of the court to be established by virtue of this Act, shall be a sufficient authority to the proper officer for entering up such judgment; and when it shall appear to the satisfaction of the said court that such prisoner is of ability to pay such debts, or any part thereof, or that he is dead, leaving assets for that purpose, the court may permit execution to be taken out upon such judgment, or put in force any other power given by this Act against the property acquired by such prisoner after his discharge, for such sum of money as under all the circumstances of such prisoner the court shall order; such sum to be distributed rateably amongst the creditors; and such further proceeding shall and may be had, according to the discretion of the said court, from time to time, until the whole of the debts due to the several persons against whom such discharge shall have been obtained shall be fully paid and satisfied, together with such costs as such court shall think fit to award; and no *scire facias* shall be necessary to revive such judgment on account of any lapse of time, but execution shall at all times issue thereon by virtue of the order of the said court: Provided always, that in case any such application against such prisoner shall appear to the court to be ill founded and vexatious, it shall be lawful for the court not only to refuse to make any order on such application, but also to dismiss the same with such costs as to the court shall appear reasonable.

When order for discharge of prisoner is made, court may order that judgment shall be entered up against the prisoner in one of the superior courts, &c.

Court may permit execution to be taken out on such judgment where there are assets, and the prisoner of ability to pay.

No *scire facias* necessary.

XXVI. And be it further enacted, That no prisoner who shall have obtained his or her discharge by virtue of this Act, shall at any time after such discharge be imprisoned by reason of the judgment so as aforesaid entered up against him in the name of such assignee or assignees as aforesaid, or of any judgment or decree or order obtained for payment of money only, or for debt, damages, contempt of any court, ecclesiastical or civil, by nonpayment of money or costs contracted, incurred, occasioned, owing, or growing due at the time of the

Prisoner after judgment is entered up, not to be subject to imprisonment by reason of the same.

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commencement of such actual custody, and expressed in such discharge or shall be in prison for any costs, taxed or untaxed, to the payment of which he may be then liable in consequence of or by reason of any contempt, or in order to the purging the same; but that upon every arrest or detainer in prison upon any such judgment or decree or order, or for or on account of any such debt, damage, contempt, costs, sum and sums of money, it shall and may be lawful for any judge of the court from which any such process shall have issued, upon shewing to such judge a copy of the order for such discharge as aforesaid, attested by the proper officer of the said court, to release from custody such prisoner as aforesaid, and at the same time, if such judge shall in his discretion think fit, to order the plaintiff in such suit or suits, or any person or persons suing out such process, to pay such prisoner the costs which he or she shall have incurred on such occasion, or so much thereof as to such judge shall seem just and reasonable, such prisoner causing a common appearance to be entered for him or her in the action or suit for any such debt as aforesaid.

In case of an action for escape, this Act to be given in evidence.

XXVII. And be it further enacted, That if any action of escape, or any suit or action be brought against any judge, justice of the peace, sheriff, gaoler, keeper of any prison, or any person, for performing the duty of his office in pursuance of this Act, such judge, justice, sheriff, gaoler, or keeper, or other person, may plead the general issue, and give this Act in evidence; and if the plaintiff be nonsuited, or discontinue his or her action, or verdict shall pass against him or her, or judgment shall be had upon demurrer, the defendant shall have treble costs.

Where prisoner shall be declared entitled to the benefit of the Act, no execution shall issue against such prisoner for debt contracted prior to his actual confinement.

XXVIII. And be it further enacted, That after the said court shall have declared any prisoner to be entitled to the benefit of this Act, as aforesaid, no writ of *fieri facias* shall issue on any judgment before then obtained against such prisoner, for any debt contracted or cause of action arising before the time of the commencement of such actual custody as aforesaid, except upon the judgment entered up by order of the court as aforesaid; and that if any *scire facias*, or action of debt, or any other suit or action, shall be brought against any prisoner, his or her heirs, executors, or administrators, upon any judgment obtained against any such prisoner, or any statute or recognizance acknowledged by him or her, or any other cause of action arising before the commencement of such actual custody by virtue of this Act, except upon the judgment entered up against such prisoner under the order of the court as aforesaid, it shall and may be lawful for any such prisoner, his or her heirs, executors, or administrators, to plead generally, that such prisoner was duly discharged according to this Act, by the order by which such discharge shall have been obtained, and that such discharge remains in force, without pleading any other matter specially, whereto the plaintiff or plaintiffs shall or may reply generally, and deny the matters pleaded as aforesaid, or reply any other matter or thing which may shew the defendant or defendants not to be entitled to the benefit of this Act, or that such prisoner was not duly discharged according to the provisions of this Act, in the same manner as the plaintiff or plaintiffs might have replied, in case the defendant or defendants had pleaded this Act and his discharge by virtue of this Act specially; and if the plaintiff or plaintiffs be nonsuited, discontinue his or her action, or verdict pass against him, her, or them, or judgment shall be had on demurrer, the defendant or defendants shall have double costs: Provided always, that it shall be lawful to proceed against any prisoner so discharged upon any judgment, recognizance, or other security obtained or given, and which could not have been put in force against such prisoner at the time of his obtaining such discharge; any thing in this Act contained to the contrary notwithstanding.

Prisoner may be proceeded against on that which could not be put in force at his discharge.

When prisoner shall, after discharge, become entitled to property which cannot be taken in execution,

XXIX. Provided always, and be it further enacted, That in case any such prisoner shall, after his discharge out of custody as aforesaid, become entitled to or possessed in his or her own right of any stock in the public funds of this country, or of any bills of exchange, promissory notes, bank notes, or other choses in action, or other property which by

law cannot be taken in execution under the said judgment so to be entered up in the names of the said assignee or assignees as aforesaid, and such prisoner shall have refused to convey, assign, or transfer such stock, bills of exchange, promissory notes, bank notes, or other choses in action, or other property, or so much of them as may be sufficient to satisfy the said judgment, then and in such cases it shall and may be lawful for the assignee or assignees of such prisoner to apply by petition in a summary way, setting forth the facts of the case, to the court, and to pray that the said prisoner may be taken and remanded to custody notwithstanding any such discharge; and thereupon, if upon examination by the said court, and hearing as well the said assignee or assignees as the said prisoner, in case he shall appear, or the said assignee or assignees only, in case such prisoner, due notice having been given to him, shall not appear, it shall appear to the said court that the contents of such petition are true, then and in such case such court shall so declare and adjudge, and shall thereupon order the said prisoner to be apprehended and remanded to custody, which shall in such cases always be within the walls of the prison from whence such prisoner shall have been discharged, and not within any rules or liberties thereof, until he shall convey, assign, and transfer such stock, bills of exchange, promissory notes, bank notes, or other choses in action, or other property, or as much thereof as the court shall direct, towards the satisfaction of such judgment, to such assignee or assignees, for the general benefit of the creditors of such prisoner.

Assignee may apply by petition to the court for relief.

Court may order prisoner to be apprehended.

XXX. Provided always, and be it further enacted, That in case any person or persons, body politic or corporate, shall after the discharge of any such prisoner out of custody as aforesaid, become possessed of, or have under his or their power or control, any stock in the public funds of this country, or any legacy, money due or growing due, bills of exchange, promissory notes, bank notes, securities for money, goods and chattels, or any other property whatsoever belonging to such prisoner, or held in trust for him, or for his use and benefit, or to which such prisoner shall be in any way entitled; or in case any such person or persons, body politic or corporate, shall be in any manner indebted to such prisoner, it shall and may be lawful for the said court, upon the application of any assignee or creditor of such prisoner, to cause notice to be given to such person or persons, body politic or corporate, directing him or them to hold and retain the said property till the said court shall make such further order concerning the same; and thereupon it shall be lawful for the said court further to order such person or persons, body politic or corporate, to deliver over such property, and to pay such debts as aforesaid, or any part thereof, to the receiver of the said court, or to the assignee or assignees of such prisoner, for the general benefit of his creditors entitled to claim under such judgment entered up by order of the said court as aforesaid.

When prisoners, after discharge, become entitled to stock in the public funds, &c. court to make further order.

XXXI. And be it further enacted, That the said court to be established by virtue of this Act shall and may admit at their discretion any number of fit persons to practise in the said court as attornies or agents, on behalf of such prisoners in such actual custody as aforesaid, which admissions shall in all cases be made without the payment of any fee or gratuity whatsoever, and shall be filed of record in the said court; and that in case any person not admitted on the files of the said court shall practise in the said court as an attorney or agent, on the behalf of any prisoner in such actual custody as aforesaid, he shall be deemed and taken to be guilty of a contempt of the said court.

Court to appoint attornies to practise in it.

XXXII. And be it further enacted, That in cases wherein by this Act an oath is required, the solemn affirmation of any person being a Quaker shall and may be accepted and taken in lieu thereof; and every person making such affirmation, who shall be convicted of wilful false affirmation, shall incur and suffer such and the same penalties as are inflicted and imposed upon persons convicted of wilful and corrupt perjury.

False affirmation punished as perjury.

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Persons wilfully omitting any thing in schedule as finally amended, except wearing apparel, &c. not exceeding 20*l.* subject to three years' imprisonment.

XXXIII. And be it further enacted, That from and after the passing of this Act, in case any prisoner shall, with intent to defraud his creditor or creditors, wilfully and fraudulently omit in his schedule, as finally amended and filed in the said court, at the time of the order for his discharge from such actual custody as aforesaid, any effects or property whatsoever, or retain or except out of the schedule, as wearing apparel, bedding, working tools and implements, and other necessaries, more in value than twenty pounds, every such person so offending, and any person aiding and assisting him to do the same, shall, upon being thereof convicted by due course of law, be adjudged guilty of a misdemeanor, and thereupon it shall and may be lawful for the court before whom such offender shall have been so tried and convicted, to sentence such offender to be imprisoned and kept to hard labour for any period of time not exceeding three years.

All affidavits used, to be sworn before the court, &c.

XXXIV. Provided always, and be it further enacted, That all affidavits to be used before the said court, or any commissioner thereof, or any justices of the peace, at their general or adjourned sessions, or any examiner appointed under this Act, shall and may be sworn before the said court, or any commissioner appointed by the said court for the purpose of taking affidavits, or any master extraordinary in Chancery, or commissioner for taking affidavits in any of the superior courts of *Westminster Hall*; and that no conveyance, assignment, letter of attorney, affidavit, or other proceedings whatsoever before or under any order of the said court, or before any justices of the peace acting in the execution of this Act, shall be liable to the payment of or be chargeable with the payment of any stamp or other duty whatsoever.

No proceeding liable to stamp duty.

Rate of payment for the insertion of advertisements, 3*s.*

XXXV. Provided always, and be it further enacted, That the sum of three shillings, and no more, shall be paid to any printer or proprietor of any newspaper, for the insertion of any advertisement hereinbefore directed to be inserted in any newspaper, and all printers and proprietors of newspapers are hereby required to insert the same on payment of the said sum of three shillings for the insertion thereof, in such form as the said court shall from time to time direct; and that no such advertisement shall be liable to the payment of or chargeable or charged with any stamp or other duty whatsoever.

Not liable to stamp duty.

Commissioners powers under the Act 53 Geo. 3. c. 102. extended to this Act.

XXXVI. And whereas it is expedient, that the powers given to the court established by virtue of an Act passed in the fifty-third year of his late Majesty's reign, intituled *An Act for the Relief of Insolvent Debtors in* England, and two Acts of the fifty-fourth and fifty-sixth years of his said late Majesty's reign, to amend the said Act, should be continued and vested in the court to be established by virtue of this Act, in so far as any of the same relate to the persons who have already obtained their discharge by virtue of that Act, and their estate and effects; be it further enacted, That the court to be established by virtue of this Act shall and may exercise all such powers, and do all such Acts, and make all such orders respecting persons who have already obtained their discharge by virtue of the said recited Act, or their estate and effects, or their respective assignee or assignees, or the provisional assignee appointed by the court established by virtue of the said recited Act, as might have been exercised, done, and made by the court established by virtue of the said recited Act, in case the said recited Act had been continued by this Act.

Former records to be delivered over to officers appointed by this Act.

XXXVII. And be it further enacted, That all the records, papers, documents, and money, of and belonging to or received under the authority of the court established by virtue of the said recited Act, shall immediately after the time when the court to be established by virtue of this Act shall have been fully constituted and established as aforesaid, be delivered over to the chief clerk of the said last-mentioned court, by the officer or officers, or other persons having the custody of the same; and which said records shall be deemed and taken to be the records of the court to be established by virtue of this Act.

XXXVIII. Provided always, and be it further enacted, That nothing in this Act contained shall extend to entitle the assignee or assignees of the estate and effects of such prisoner, being an officer of the army or navy, or in the naval or military service of the *East India* Company, or a beneficed clergyman or curate, to the pay or pension of such officer, or to the income of such benefice or curacy, for the purposes of this Act: Provided always nevertheless, that it shall be lawfull for such assignee or assignees to apply for and obtain a sequestration of the profit of any such benefice, for the payment of the debts of any such clergyman, and the order for such discharge shall be a sufficient warrant for granting of such sequestration, without any writ or other proceedings to authorize the same, and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levare facias*, founded upon any judgment against such clergyman: Provided also, that it shall be lawful for the said court to order such portion of the pay or half-pay or pension of any such officer of the army or navy, or naval or military service of the *East India* Company, as on communication from the said court to the Secretary at War, or the Lords Commissioners of the Admiralty, or the Court of Directors of the United *East India* Company, he or they may respectively consent to, by writing under the hand of the said Secretary at War, or the Lords Commissioners or Secretary of the Admiralty, or the said Secretary of the Court of Directors, to be applied in payment of his debts, and for that purpose to be paid to his assignee or assignees; and such order and consent being lodged in the office of the Paymaster of his Majesty's Forces, or of the Treasurer of the Navy, or the said Secretary of the said Court of Directors, as the case shall require, such paymaster or treasurer or secretary shall give directions accordingly, and such portion of the pay, half-pay, or pension of such officer, as shall be specified in such order and consent, shall be paid to his assignee or assignees, until the said court shall make order to the contrary.

Assignees power not to extend to the effects of officers of the army or navy, &c. or beneficed clergymen.

Sequestration of the profit of benefice may be applied for.

Portion of pay of officers may be obtained by application.

XXXIX. And be it further enacted, That the justices of the peace acting for the several parts of *Kesteven* and *Holland* in the county of *Lincoln*, shall and may hold their several general quarter sessions or other sessions of the peace for such parts or divisions respectively, by adjournment or otherwise, in the parts or division of *Lindsey*, in the said county of *Lincoln*, for the purposes of this Act, and shall and may meet and act therein for such purposes only, and they are hereby empowered to meet and act accordingly.

Justices of Kesteven, &c. may hold their quarter sessions for the purposes of this Act in the division of Lindsey.

XL. Provided always, and be it further enacted, That this Act shall not extend, or be construed to extend, to discharge any prisoner seeking the benefit of this Act, with respect to any debt due to his Majesty, or his successors, or to any debt or penalty with which he or she shall stand charged at the suit of the crown, or of any person for any offence committed against any Act or Acts of Parliament relative to his Majesty's revenues of customs, excise, stamp or salt duties, or any of them, or any branches of the public revenue, or at the suit of any sheriff or other public officer upon any bail bond entered into for the appearance of any person prosecuted for any offence committed against any Act or Acts of Parliament relative to his Majesty's said revenues of customs, excise, stamps, or salt duties, or any other branches of public revenue, unless three of the lords commissioners of his Majesty's treasury for the time being shall certify under their hands their consent to such discharge.

Act not to extend to crown debtors, unless treasury give consent.

XLI. And be it further enacted, That it shall and may be lawful for any person or persons who may now or shall hereafter be imprisoned under or by virtue of any writ of *capias*, in any immediate extent or extents issued and remaining in force at the instance or for the benefit and reimbursement of any surety or sureties, or other person or persons, or the inhabitants of any parish, ward, or place, who shall or may have advanced and paid the debt to the crown, and by reason whereof the lords commissioners of his Majesty's treasury may not be authorized to give their consent last aforesaid, to apply to the barons of his Majesty's Court of Exchequer in *England* or *Scotland*, for his, her, or their dis-

Prisoners under writ of *capias* in cases of extents, as herein mentioned, may apply to the barons of Exchequer to be discharged.

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charge, giving one month's previous notice in writing to the surety or sureties, or person or persons aforesaid, or to the churchwardens or overseers of the parish, ward, or place, at whose instance or for whose benefit respectively such extent or extents shall remain in force, of the intention of such person or persons so imprisoned to make such application, and an enumeration and description of all and every the property, debts, and effects whatsoever, of such person or persons, in his, her, or their own possession or power, or in the possession or power of any other person or persons for his, her, or their use; and for the said court to whom such application shall be made, to order such person or persons to be brought before them, or before any baron of the said court, to be examined upon oath touching and concerning his, her, or their property and effects; and if such person or persons respectively shall upon such examination make a full disclosure of all his, her, or their property and effects, and it shall otherwise appear to the satisfaction of the said court reasonable and proper that such person or persons should be no longer imprisoned under such writ, for such court or baron to order a writ of *supersedeas quoad corpus* to be issued out of the said court for the liberation of such person or persons from such imprisonment: Provided always, that no such liberation as aforesaid shall be held or deemed to satisfy or supersede such extent or any proceedings thereon, except as to such imprisonment as aforesaid, or the debt or debts seized under and by virtue thereof, and for which such person or persons shall be so imprisoned.

Bankrupts not entitled to discharge under this Act, unless in custody for three years.

XLII. Provided also, and be it further enacted, That no prisoner against whom any commission of bankrupt shall have issued and shall remain in force, and who shall not have obtained a certificate of his or her conformity to the several statutes concerning bankrupts under such commission, shall be entitled to be discharged by virtue of this Act from any debt for which such prisoner shall be detained in custody, and which might have been proved under such commission, unless such prisoner shall have been so detained in prison for the space of three years before the time when such prisoner shall apply for his or her discharge under this Act.

No person having the benefit of an insolvent Act shall be entitled to further relief within five years' unless three-fourths in number and value of the creditors consent.

XLIII. Provided always, and be it further enacted, That no person who shall have been at any time discharged by virtue of this Act, or of any other Act for the relief of insolvent debtors, shall again be entitled to the benefit thereof within the space of five years after such discharge, unless three-fourths in number and value of the creditors against whom such person shall seek to be discharged by virtue of this Act, shall signify his, her, or their assent to such discharge, or it shall be made appear, to the satisfaction of the court to be established by virtue of this Act, that such person has, since his or her former discharge, endeavoured, by industry and frugality, to pay all just demands upon him or her, and has incurred no unnecessary expense, and that the debts which such person has incurred subsequent to such former discharge have been necessarily incurred for the maintenance of such person, or his or her family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself or herself, and his or her family.

Mode of proceeding with prisoners of unsound mind.

XLIV. And be it further enacted, That if any person who shall at any time be a prisoner in any such prison as aforesaid, upon any such process as aforesaid, shall be or become of unsound mind, and therefore incapable of taking the benefit of this Act in such manner as he or she might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county, riding, division, or place wherein such prison shall be, to attend at the said prison and enquire into the state of mind of such prisoner; and thereupon, and also in case any such justice or justices shall receive information by other means, that any such prisoner is of unsound mind as aforesaid, such justice or justices shall go to the said prison, and by his, her, or their own view, and by examination on oath of such person or persons as he or they shall think fit to examine, shall enquire into the state of mind of such prisoner; and if it shall

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appear to such justice or justices upon such enquiry, that such prisoner is of unsound mind, and therefore incapable of taking the benefit of this Act, in such a manner as a person of sound mind might do, such justice or justices shall forthwith make a record of the fact, and certify the same to the court to be established by virtue of this Act; and thereupon it shall be lawful for such court, at the instance of any person or persons on behalf of such prisoner, to order notice to be inserted in the *London Gazette*, and in two or more public newspapers usually circulated in the neighbourhood of such prison, and in the neighbourhood of the usual residence of such prisoner before he or she was committed to such prison, as the said court shall see fit, and shall in such order specify and direct, that application will be made to such court for the discharge of such prisoner, on a day to be specified in such order, being twenty days at least from the day of publication of such one of such Gazette and newspapers containing such notice as shall be last published; which notice, together with service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his, her, or their attorney or attornies in such suit, shall be deemed sufficient to authorize the said court to proceed to the discharge of such prisoner, if otherwise entitled to such discharge, according to the true intent and meaning of such Act; and such court shall proceed accordingly, and shall discharge such prisoner, and do all other Acts under this Act, in case it shall appear that such prisoner might have obtained his or her discharge under this Act if of sound mind.

Officer of the court to produce schedules and proceedings of court, when required.

XLV. And be it further enacted, That the proper officer of the court to be established by virtue of this Act shall, on the reasonable request of such prisoner, or of any creditor or creditors of such prisoner, or his, her, or their attorney, produce and show to such prisoner, creditor or creditors, or his, her, or their attorney, at such times as the said court shall direct, such petition, schedule, order, and judgment, and all other orders and proceedings made and had in such matter; and that a true copy of every such petition, schedule, order, judgment, and other proceedings, signed by the officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, schedule, order, judgment, or other proceeding, as the case may be, without being written on stamped paper, shall at all times be admitted, in all courts whatever, as legal evidence of the same respectively.

Prisoners may, after their discharge, be examined as to their estate and effects, on application of assignees.

XLVI. And whereas the estates both real and personal of any prisoner who may be discharged by virtue of this Act, may not be sufficiently described or discovered in the schedule before directed to be delivered upon oath by such prisoner, or the assistance of such prisoner may be necessary to adjust, make out, recover, or manage his estate or effects, for the benefit of his or her creditors; Be it therefore enacted by the authority aforesaid, That it shall and may be lawful to and for the assignee and assignees of the estate and effects of any such prisoner, who shall obtain his or her discharge in pursuance of this Act, from time to time to apply to the court to be established by virtue of this Act, that such prisoner may be further examined as to any matters or things relating to his or her estate and effects, either by such court, or by any justice of the peace for the county, riding, division, or place where such prisoner shall then reside; and if such court shall direct any such examination before any such justice, such justice shall send for or call before him such prisoner, by such warrant, summons, ways, or means as he shall think fit; and if such prisoner shall appear before such justice, such justice shall examine him or her, upon oath or otherwise, as to such matters and things as such assignee or assignees shall desire, relating to the estate and effects of such prisoner; and if any such prisoner, on payment or tender of payment of such reasonable charges as such justice shall judge sufficient, shall neglect or refuse to appear before such justice, not having a lawful excuse allowed by such justice, or being come before such justice shall refuse to be sworn, or to answer such questions as by such justice shall be put to him or her,

Such persons refusing to appear or to answer questions, &c. may be committed.

No. I. 1 George IV. c. 119.

relating to the discovery of his or her estate and effects, vested or intended to be vested in such assignee or assignees as aforesaid, as required by the order of the said court, such justice shall certify such default to the said court; and thereupon, and also in case such prisoner shall neglect or refuse to appear before such court to be examined by such court, if the court shall think fit so to order, or appearing before such court shall refuse to be sworn, or to answer such questions as shall be put to him or her, relating to the discovery of his or her said estate or effects, then and in any of such cases it shall be lawful for such court by warrant to commit such prisoner so offending to the common gaol of any county or place, there to remain without bail or mainprize until such time as he or she shall submit himself or herself to such court, and answer upon oath or otherwise, as shall be required, to all such lawful questions as shall by such court be put, or ordered to be put to him or her, for the purposes aforesaid.

Assignees to be examined within six months after appointment.

XLVII. And be it further enacted, That the said court to be appointed by virtue of this Act, shall immediately after the end of six months next after the appointment of an assignee or assignees under this Act, at the request of any one or more creditors, summon such assignee or assignees before him, and examine him, her, or them, upon oath or otherwise, touching his, her, or their receipts and payments, and shall thereupon order the money in the hands of such assignee or assignees to be paid into the said court, and that such dividend be made of the estate and effects of such prisoner as it may think proper; and in case any dividend or dividends shall remain in the hands of such assignee or assignees for the space of twelve months next following the declaring thereof, it shall and may be lawful to and for such court, and it is hereby authorized, to order and direct that such unclaimed dividend or dividends shall be immediately paid into court; and in default of payment of such dividend or dividends by the time by the said court to be for that purpose limited, it shall and may be lawful to and for the said court to make such summary remedy for the purpose, by a distress and sale of the goods and chattels of such assignee or assignees, as to them shall seem proper; and if no sufficient distress can be found, then and in such case the said court shall be at liberty to commit the offender to the common gaol or house of correction, without bail or mainprize, there to remain until the said court shall make other order to the contrary.

Dividends remaining in their hands for 12 months shall be immediately paid into court.

Costs how to be recovered.

XLVIII. And be it further enacted, That in all cases in which the said court is by this Act authorized to award costs against any person or persons, it shall and may be lawful for the said court to cause such costs to be recovered from such person or persons in the same manner as costs awarded by a rule of any of the superior courts at *Westminster* may be recovered.

Places where petitions and proceedings relating to persons in custody shall be heard.

XLIX. And whereas it may be convenient that the hearing of the petition, and other proceedings relating thereto, of all persons confined for debt, damages, costs, sum or sums of money, or contempt for non-payment of money, in the custody of the sheriffs of the city of *London* and sheriff of the county of *Middlesex*, and of the warden of the *Fleet Prison*, should be heard and determined in some convenient place the nearest to the prisons of such sheriffs; Be it therefore enacted, That all petitions and other proceedings relating thereto, of all persons confined as aforesaid, and in the custody of the sheriffs of *London* and sheriff of *Middlesex*, and of the warden of the *Fleet Prison*, may, if the said court shall think fit, be heard and determined at the *Guildhall* in and for the said city of *London*, or at the Sessions House in the *Old Bailey*, or at such other place in the city of *London*, as the said commissioner for the time being shall appoint for that purpose.

Persons discharged from contempts of court for non-payment of costs to be relieved from other costs, &c.

L. And be it further enacted by the authority aforesaid, That all persons who have been discharged under any Act for the relief of insolvent debtors from contempts of any court for non-payment of money or costs, shall be deemed and taken to have been discharged, not only from costs ordered to be paid, but also from all costs which such per-

sons would be liable to pay in consequence or by reason of such contempts, or on paying the same; and also that all persons from whose demands for costs any persons shall be discharged by virtue of this or any former Act or Acts, shall be deemed and taken to be creditors of such last-mentioned persons, and entitled to the benefit of all the provisions made for creditors by such Act or Acts.

This Act not to defeat the proceedings in any commission of bankrupt.

LI. Provided always, That nothing in this Act contained shall extend or be construed to extend to defeat the proceedings in any commission of bankrupt which may be issued against any prisoner who may claim the benefit of this Act, before such prisoner shall have obtained an order for his discharge under this Act, but that every such commission shall have relation to avoid any assignment of the estate and effects of the said prisoner under this Act, as such commission would have had to avoid any assignment by such prisoner if this Act had not been made.

Continuance of Act.

LII. And be it further enacted, That this Act shall continue in force until the first of *June* One thousand eight hundred and twenty-five, and thenceforth until the end of the next Session of Parliament, and no longer.

Act may be altered this Session.

LIII. Provided always, and be it further enacted, That this Act, or any part thereof, may be repealed or altered by any Act or Acts to be made in this present Session of Parliament.

# PART IV.

## CLASS IV.

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### *Outlawry*

**[ No. I. ] 5 Edward III. c. 12.—What is requisite to be done to have their Pardons allowed which be outlawed.**

5 Edward III. c. 12.

Pardon of him that is outlawed upon a judgment.

Outlawry upon an original before appearance.

A scire facias awarded against the plaintiff.

'ITEM it is established and ordained, That in case where the plaintiff shall recover damages, and he against whom the damages be recovered be outlawed at the King's suit, that no charter of pardon shall be granted of his outlawry, except the Chancellor be certified that the plaintiff is satisfied of his damages. And in case that a man be outlawed by process before his appearance, no such charter shall be granted, except the Chancellor be certified that such person outlawed hath yielded himself to prison before the justices of the place, from whence the writ of exigent issued; that is to say, if from the King's Bench, then he shall yield him in the same place; and if from the common bench, then he shall yield himself there; and if from the justices of *Oyer Terminer*, whiles the same justices do sit, he shall yield him before them; and if they be risen, then he shall yield him in the King's Bench, before the justices, and the record with the process shall be removed before them by writ. And the said justices before whom they shall so yield them, shall cause the party plaintiff to be warned to appear before them at a certain day, at which day if the warning be duly witnessed, and the plaintiff appear upon his warning, then they shall plead upon the first original writ, as though no outlawry had been pronounced; and if the plaintiff come not, he that is outlawed shall be delivered by virtue of his charter. And it is to be understood, that all such charters be of the grace of the King, as before they have been.'

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**[ No. II. ] 5 Edward III. c. 13.—What is requisite where any Person will avoid an Outlawry by Imprisonment.**

5 Edward III. c. 13.

"ITEM, Because divers people being duly outlawed, have avoided the outlawries pronounced against them, by reason of imprisonments untruly testified by sheriffs and others which have no record;" 'It is enacted, That if any from henceforth will defeat any outlawry pronounced upon him by such testimony, that he shall yield himself to the prison, and then the justices of the King's Bench shall cause the party at whose suit the outlawry was pronounced, to be warned to be before them at a certain day; at which day, if the party will verify that the testimony is untrue, his averment shall be received. And in like manner the King's sergeant, or his attorney, or other that will sue for the King, shall be received to have the same averment against such testimony, in case where such outlawry is pronounced at the King's suit.'

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**[ No. III. ] 25 Edward III. st. 5. c. 17.—Process of Exigent shall be awarded in Debt, Detinue, and Replevin.**

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* Statutes relating exclusively to Outlawry on Criminal Process are contained in Part V. Title *Criminal Proceedings*.

'ITEM it is accorded, That such process shall be made in a writ of debt and detinue of chattels, and taking of beasts, by writ of *capias*, and by process of exigend by the sheriff's return, as is used in a writ of accompt.'

No. III 25 Edw. III. st. 5. c. 17.

## [ No. IV. ] 1 Henry IV. c. 18.—Process against one of the county of *Chester* which committeth an offence in another shire.

## [ No. V. ] 7 Henry IV. c. 13.—Impotent persons that be outlawed may make attorneys.

"ITEM, Whereas many of the King's liege people be outlawed, and many waved by erroneous process in law, and be so impotent in their bodies, by divers maladies and infirmities that they cannot come in their proper persons before the King in his Bench, there to make their suit to reverse such erroneous process;" 'it is ordained and established, That every justice of the one bench and of the other, and also the Chief Baron of the Exchequer, shall have power to examine the same persons, having such malady and diseases openly known, and thereupon may the same justices and baron, and every of them, by their discretion, record their attorney in this case. Provided always, That in the writ of *capias ad satisfaciendum* the common law shall hold place.'

7 Henry IV. c. 13.

*Capias ad satisfaciendum.*

## [ No. VI. ] 1 Henry V. c. 5.—In which original writs additions of the defendants' names shall be put.

'ITEM, it is ordained and established, That in every original writ of actions personals, appeals and indictments, and in which the exigent shall be awarded, in the names of the defendants in such writs original, appeals and indictments, additions shall be made of their estate or degree, or mystery, and of the towns or hamlets, or places, and counties of the which they were or be, or in which they be or were conversant; and if by process upon the said original writs, appeals, or indictments, in the which the said addition be omitted, any utlagaries be pronounced, that they be void, frustrate, and holden for none; and that before the utlagaries pronounced, the said writs and indictments shall be abated by the exception of the party, where in the same the said additions be omitted. Provided always, That though the said writs of additions personals be not according to the records and deeds, by the surplusage of the additions aforesaid, that for that cause they be not abated; and that the clerks of the Chancery, under whose names such writs shall go forth written, shall not leave out or make omission of the said additions as is afore said, upon pain to be punished, and to make a fine to the King, by the discretion of the Chancellor. (1) And this ordinance shall begin to hold place at the suit of the party, from the Feast of *St. Michael* next ensuing forward.'

1 Henry V. c. 2.

Surplusage of additions shall not prejudice.

## [ No. VII. ] 19 Henry VII. c. 9.—Process in Actions upon the Case sued in the King's Bench and Common Pleas.

[Inserted *ante*, Class III. No. 11.]

(1) No addition having been given to the defendant, either in the recital of the writ or in the subsequent part of the declaration, he pleaded the statute of additions, 1 Hen. V. in abatement, and prayed judgment of the declaration. The Court of Common Pleas held the plea a nullity, and allowed the plaintiff to sign judgment; Gray v. Sidnoff, 3 B. & P. 395.

No. VIII. 6 H. VIII. c. 4.

[ No. VIII. ] 6 Henry VIII. c. 4.—An Act for Proclamations to be made before the exigents be awarded in foreign shires.

4 Henry VIII. c. 4.

'WHERE at a parliament holden at *Westminster* the fourth day of 'February, in the third year of the reign of our sovereign Lord 'King *Henry* the Eighth that now is, and from thence (for divers urgent 'causes) unto the fourth day of *November*, the fourth year of the reign 'of our said Sovereign Lord, prorogued, one good and reasonable Act 'was made and ordained, touching writs of proclamation to be made 'upon exigents sued against any person in foreign or other shire, than 'where such defendant be called of; only to endure from thence unto 'the next parliament; which Act is now determined, the effect and true 'intent of which said Act is thought right, available, and commodious, 'and in avoiding of outlawries hereafter to be pronounced against any 'person by reason of such foreign suits, to have continuance and per-'petually to endure:' Be it therefore, by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by authority of the same Parliament enacted, ordained, and established, That if and where any writ of exigent, at any time from the fifteenth day of *Easter* next coming, or after, shall be awarded at the suit of our Sovereign Lord the King, or any other person or persons, plaintiff or plaintiffs, in any action personal, against any person or persons called of any shire or city, being a shire corporate of itself, or else late of any such shire or city, other than into such shire or city whereinto such exigent shall be awarded, to be called according to the law; and also in every writ of exigent in any action personal, whereof the process or exigent at the said fifteenth day of *Easter*, or after, shall be directed into *London* or *Middlesex*, the defendant being called late of *London*, or late of *Middlesex*, and at the time of the exigent awarded not dwelling in *London*, nor in *Middlesex*, or else that the said defendant or defendants in the same exigent dwell in any other shire or place than where the King's writ runneth; then the justices before whom any such exigent is to be awarded, in all actions where the exigent shall not be directed into *London* nor *Middlesex*, to award a writ of proclamation to be directed to the sheriff of the same county where it doth appear by the using of such action that the party defendant is or lately was dwelling, if the King's writ there be current, and else to the next shire adjoining to the county or counties, or other places whereof the party is called, or lately supposed by the said exigent to have his being of, where the King's writ so runneth not. And in every action as aforesaid, whereof the exigent shall be directed into *London* or *Middlesex*, and the defendant or defendants in the same called late of *London* or of *Middlesex*, and at time of the exigent awarded, not having his or their dwelling in *London* or *Middlesex*, then the writ of proclamation to be awarded, made, and directed unto the sheriff of the shire where the defendant at the time of the exigent so against him or them awarded shall have his dwelling, or, in case where the King's writ runneth not, unto the next shire thereunto adjoining; the which said writ of proclamation shall contain the effect of the same action, and that the sheriff of the county to whom any such writ of proclamation shall be directed, shall make three proclamations within his county at three several days, that is to say, two of the same proclamations in the full and plain shire court of the same county, and the third of the said proclamations to be made at the general sessions in those parts, where the party defendant is supposed to be dwelling, or in the parts of the county next adjoining to the county or counties where the King's writ runneth not, that the party defendant yield himself to the sheriff of the foreign county, to whom any such exigent in any Act personal is awarded; so that the sheriff of such foreign county may upon his yielding have the body of the said defendant before the justices, before whom any such exigent is awarded, at the day in the same exigent

Proclamation awarded in a foreign county than where the defendant is sued.

Proclamations where the party is dwelling in a county palatine.

Three proclamations.

For proclamations in counties palatine, see 1 Edw. VI. c. 10. s. 2. and 5 & 6 Edw. VI. c. 26. s. 2.

comprised, there to answer to the plaintiff in the same according to the law.

No. VIII. 6 H. VIII. c. 4.

II. And that every such writ of proclamation shall have the same day of return as the writ of exigent upon such foreign action so awarded shall have: And that every such writ of proclamation be delivered of record to the sheriff or deputy of the county into the which any such writ of proclamation is to be awarded; and that the sheriff of the same county duly do execute the same, and thereof make true return at the day of the same writ appointed, upon pain to forfeit such amercinment unto the King our Sovereign Lord, and to his heirs, as by the discretion of the justices before whom such exigent shall be returnable, shall be set.

The proclamation shall be delivered to the sheriff of record.

III. And that the officer in whose office such exigent is taken, make out the said writ and writs of proclamation, as hereafter shall be awarded in any of the said courts.

IV. And that the same officer take no more for the making of any such writ of proclamation, and the entering of the same of record, but only *vi. d.*

The officer's fee for making of proclamation.

V. And if any outlawry hereafter be had or promulged against any person or persons in any action personal in any foreign county, and no writ of proclamation (as is aforesaid) awarded and returned, that then every such outlawry to be utterly void and of no effect ne force in the law; and that all outlawries had contrary to this Act be avoided by averment, without suing of any writ of error.

An outlawry avoided without writ of error.

## [ No. IX. ] 5 and 6 Edward VI. c. 26.—An Act for Writs of Proclamation upon *Exigend*, to be current in the county palatine of *Lancaster*.

## [ No. X. ] 31 Elizabeth, c. 3.—An Act for the avoiding of privy and secret outlawries of the Queen's subjects.

31 Elizabeth c. 3.

'FOR the avoiding of secret outlawries in actions personal against the 'Queen's subjects, having known places of their dwellings, by 'reason that proclamations are made in the county courts and in quar-'ter sessions, which are places remote from their dwellings, and thereby 'they have not any convenient notice of such suits against them:' Be it enacted and ordained by the authority of this present Parliament, That in every action personal wherein any writ of exigent shall be awarded out of any court, in or after the term of *Easter* next coming, one writ of proclamation shall be awarded and made out of the same court, having day of *teste* and return as the said writ of exigent shall have, directed and delivered of record to the sheriff of the county where the defendant at the time of the exigent so awarded shall be dwelling, which writ of proclamation shall contain the effect of the same action: And that the sheriff of the county unto whom any such writ of proclamation shall be directed, shall make three proclamations in this form following, and not otherwise; that is to say, one of the same proclamations in the open county court, and one other of the same proclamations to be made at the general quarter-sessions of the peace, in those parts where the party defendant at the time of the exigent awarded shall be dwelling, and one other of the same proclamations to be made one month at the least before the *quinto exact.* by virtue of the said writ of exigent, at or near to the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling at the time of the said exigent so awarded; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid of the parish, in the same county, and next adjoining to the place of the defendant's dwelling; and upon a *Sunday*, immediately after divine service and sermon, if any sermon there be; and if no sermon there be, then forthwith after divine service:

Three proclamations shall be made in every action personal, wherein any writ of exigent shall be awarded, &c.

No. X.
31 Eliz. c. 3.

The officer's fee for the making of the writ of proclamation by the stat. of 6 Hen. VIII. c. 4.

The sheriff's fee for making the proclamation at the church-door.

And that all outlawries had and pronounced after the end of the next *Easter* Term, and no writs of proclamation awarded and returned according to the form of this statute shall be utterly void and of none effect; and that the officer in whose office such writs of exigent and proclamation shall be made, shall and may take such fees as by the statute made in the sixth year of the reign of the late King of famous memory, King *Henry* the Eighth, is limited and appointed in that behalf, and no greater fees in any wise; and that the sheriff for making of the proclamation at or near to the church or chapel door as is aforesaid, shall have twelve pence.(1)

A proclamation shall be of the summons in a real action at the church-door.

II. And for the avoiding of secret summons in real actions, without convenient notice of the tenants of the freehold, Be it also ordained and enacted by the authority of this present Parliament, That after every summons upon the land in any real action, fourteen days at the least before the day of the return thereof proclamations of the summons shall be made on a *Sunday* in form aforesaid, at or near to the most usual door of the churches or chapel of that town or parish, where the land whereupon the summons was made doth lie, and that proclamation so made as aforesaid shall be returned, together with the names of the summoners: And if such summons shall not be proclaimed and returned according to the tenor and meaning of this Act, then no *grand cape* to be awarded but *alias* and *plurias* summons, as the cause shall require, until a summons and proclamation shall be duly made and returned according to the tenor and meaning of this Act.

The defendant upon a writ of error sued shall be bound to answer the plaintiff, and to satisfy the condemnation.

III. And be it further enacted, That before any allowance of any writ of error, or reversing of any outlawry be had by plea or otherwise, through or by want of any proclamation to be had or made according to the form of this statute, after the end of *Easter* Term next, the defendant and defendants in the original action shall put in bail, not only to appear and answer to the plaintiff in the former suit, in a new action to be commenced by the said plaintiff for the cause mentioned in the first action, (2) but also to satisfy the condemnation, if the plaintiff shall begin his suit before the end of two terms next after the allowing the writ of error, or otherwise avoiding of the said outlawry.

## [ No. XI. ] 31 Elizabeth, c. 9.—An Act for Writs upon Proclamations and *Exigents* to be current within the County Palatine of *Durham*.

[This at length, *infra*.]

## [ No. XII. ] 4 and 5 William and Mary, c. 18.—An Act to prevent malicious informations in the Court of *King's Bench*, and for the more easy reversal of Outlawries in the same court.

4 & 5 W. & M. c. 18.

'WHEREAS divers malicious and contentious persons have more of 'late than in times past procured to be exhibited and prosecuted, 'informations in their Majesties' Court of *King's Bench* at *Westminster*, 'against persons in all the counties of *England*, for trespasses, bat-'teries, and other misdemeanors, and after the parties so informed 'against have appeared to such informations, and pleaded to issue, the

(1) These provisions are adopted by the Irish statute, 12 and 13 Jac. I. c. 8., which imposes a penalty upon attornies issuing a writ of exigent without a writ of proclamation; and by stat. 6 Ann. c. 15, Irish, an affidavit must be made and filed of the proclamation's having taken place. See 2 Gabb. 194.

(2) A defendant appearing *in person* to reverse an outlawry for a defect at common law, (as the being beyond sea) is only bound to find bail in common form to pay the condemnation money, or render the principal; Haveloock v. Geddes, 12.

No. XII. 4 & 5 W. & M. c. 18.

'informers do very seldom proceed any further, whereby the persons so 'informed against are put to great charges in their defence; and although 'at the trials of such informations verdicts are given for them, or a *noli* '*prosequi* be entered against them, they have no remedy for obtaining 'costs against such informers: And whereas divers persons are prose-'cuted in the said Court of *King's Bench* to outlawries for debts, tres-'passes, and other misdemeanors, and there is no reversing such out-'lawries but by the personal appearance of the persons outlawed, so 'that the persons arrested upon such outlawries (if poor) lie in prison 'till their deaths, but if able, it costs them very dear to reverse the 'same outlawries:' For remedy whereof,

Clerk of the Crown to exhibit no information, except by order of Court, nor issue process till prosecutor has given recognizance, &c.

II. Be it enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this Parliament assembled, and by the authority of the same, That from and after the first day of *Easter* Term, which shall be in the year of our Lord One thousand six hundred ninety and three, the clerk of the crown in the said Court of *King's Bench* for the time being shall not, without express order to be given by the said court in open court, exhibit, receive, or file any information for any of the causes aforesaid, or issue out any process thereupon, before he shall have taken or shall have delivered to him a recognizance from the person or persons procuring such information to be exhibited, with the place of his, her, or their abode, title, or profession, to be entered, to the person or persons against whom such information or informations is or are to be exhibited, in the penalty of twenty pounds, (1) that he, she, or they will effectually prosecute such informations or information, and abide by and observe such orders as the said court shall direct, which recognizance the said clerk of the crown, and also every justice of the peace of any county, city, franchise, or town corporate (where the cause of any such information shall arise) are hereby empowered to take; after the taking whereof by the said clerk of the crown, or the receipt thereof from any justice of the peace, the said clerk of the crown shall make an entry thereof upon record, and shall file a memorandum thereof in some public place in his office, that all persons may resort thereunto without fee; and in case any person or persons against whom any information or informations for the causes aforesaid, or any of them shall be exhibited, shall appear thereunto, and plead to issue, and that the prosecutor or prosecutors of such information or informations shall not at his and their own proper costs and charges, within one whole year next after issue joined therein, procure the same to be tried; or if upon such trial a verdict pass for the defendant or defendants, or in case the said informer or informers procure a *noli prosequi* to be entered; then in any of the said cases the said Court of *King's Bench* is hereby authorized to award to the said defendant and defendants, his, her, or their costs, unless the judge before whom such information shall be tried, shall, at the trial of such information, in open court, certify upon record that there was a reasonable cause for exhibiting such information; and in case the said informer or informers shall not within three months next after the said costs taxed, and demand made thereof, pay to the said defendant or defendants the said costs, then the said defendant and defendants shall have the benefit of the said recognizance to compel them thereunto.

Memorandum to be filed.

Defendants shall have costs, &c.

Remedy for costs.

Outlawry may be reversed by attorney, except, &c.

III. And for the more easy and speedy reversing of outlawries in the said court, be it enacted by the authority aforesaid, That from and after the said first day of *Easter* Term, no person or persons whatsoever, who are or shall be outlawed in the said court for any cause, matter, or thing whatsoever (treason and felony only excepted) shall be compelled to come in person into, or appear in person in the said court to reverse such outlawry, but shall or may appear by attorney, and reverse the

(1) The prosecutor is only liable for costs to the amount of the recognizance; Rex *v.* Fleetwood, 2 T. R. 145; and the Court refused to require a security for more; Rex *v.* Brooke, id. 190.

No. XII. 4 & 5 W. & M. c. 18.

same without bail, in all cases, except where special bail shall be ordered by the said court.(1)

Persons taken upon *capias*, &c, discharged.

IV. And be it further enacted by the authority aforesaid, That if any person or persons outlawed, or hereafter to be outlawed, in the said court (other than for treason and felony) shall, from and after the said first day of *Easter* Term, be taken and arrested upon any *capias utlagatum* out of the said court, it shall and may be lawful to and for the sheriff or sheriffs who hath or shall have taken and arrested such person and persons (in all cases where special bail is not required by the said court) to take an attorney's engagement under his hand to appear for the said defendant or defendants, and to reverse the said outlawries, and thereupon to discharge the said defendant and defendants from such arrests: And in those cases where special bail is required by the said court, the said sheriff or sheriffs shall and may take security of the said defendant or defendants by bond, with one or more sufficient surety or sureties, in the penalty of double the sum for which special bail is required, and no more, for his, her, or their appearance by attorney in the said court at the return of the said writ, and to do and perform such things as shall be required by the said court, and after such bond taken, to discharge the said defendant and defendants from the said arrests. (2)

Security after return of the writ.

V. And be it further enacted by the authority aforesaid, That if any person or persons outlawed as aforesaid, and taken and arrested upon a *capias utlagatum*, shall not be able within the return of the said writ to give security as aforesaid, in cases where special bail is required, so as he or they are committed to gaol for default thereof, that whensoever the said prisoner or prisoners shall find sufficient security to the sheriff or sheriffs in whose custody he or they shall be, for his or their appearance by attorney in the said court, at some return in the term then next following, to reverse the said outlawry or outlawries, and to do and perform such other thing and things as shall be required by the said court, it shall and may be lawful to and for the said sheriff and sheriffs, after such security taken, to discharge and set at liberty the said prisoner and prisoners for the same; any law or usage to the contrary notwithstanding.

Extends only to informations by Master of Crown Office.

VI. Provided, That nothing in this Act relating to informations shall extend or be construed to extend to any other informations, than such as are or shall be exhibited in the name of their Majesties' coroner or attorney in the Court of *King's Bench* for the time being (commonly called the *Master of the Crown Office*,) any thing in the said Act contained to the contrary notwithstanding.

Defendants need not plead again upon the King's demise.

VII. And be it further enacted by the authority aforesaid, That upon the demise of any King or Queen of this realm, all pleas to informations in the said court shall stand and be good in law, without calling defendants to plead again to the same, unless the defendants desire so to do, and make request to the said court for that purpose within five months next after such demise; any law or usage to the contrary notwithstanding.

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(1) This clause clearly does not extend to persons convicted of misdemeanors. Qy. If it extends to criminal misdemeanors at all; or whether the word misdemeanor, in the second branch of the preamble, is not confined to writs of conspiracy, &c. The Act does not make a defendant bailable even in civil actions who was not bailable before the outlawry; *e.g.* after judgment; Rex *v.* Wilkes, 4 Burn. 2540.

(2) An attachment will be granted against the sheriff who discharged the defendant without taking bond, although the original writ is not marked as bailable; Cracroft *v.* Gledowe, 3 Bur. 1482. The Court requires the defendant to put in bail to a new action, plead within a limited time, put the plaintiff in the same condition, &c. The Courts, upon affidavit of debt, require special bail to pay the condemnation money, and not in the alternative, to pay, or render the defendant; Sorecold *v.* Hampson, 2 Stra. 1178. 1 Wils. 3; and more fully, 12 East, 624, n.: which affidavit need not be made before the outlawry; ib. It is otherwise where the defendant appears *in person*, to reverse an outlawry for a defect at common law. See note to the preceeding Number.

# PART IV.

## CLASS V.

### *Proceedings against Persons having privilege of Parliament.*

[ No. I. ] 10 George III. c. 50.—An Act for the further preventing Delays of Justice by reason of Privilege of Parliament.

'WHEREAS the several laws heretofore made for restraining the privilege of Parliament, with respect to actions or suits commenced and prosecuted at any time from and immediately after the dissolution or prorogation of any Parliament, until a new Parliament should meet, or the same be re-assembled; and from and immediately after an adjournment of both Houses of Parliament for above the space of fourteen days, until both Houses should meet or assemble; are insufficient to obviate the inconveniences arising from the delay of suits by reason of privilege of parliament; whereby the parties often lose the benefit of several terms; for the preventing all delays the King or his subjects may receive in prosecuting their several rights, titles, debts, dues, demands, or suits, for which they have cause;' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, One thousand seven hundred and seventy, any person or persons shall and may, at any time, commence and prosecute any action or suit in any court of record, or court of equity, or of admiralty, and in all cases matrimonial and testamentary, in any court having cognizance of causes matrimonial and testamentary, against any peer or lord of parliament of *Great Britain*, or against any of the knights, citizens, and burgesses, and the commissioners for shires and burghs of the House of Commons of *Great Britain* for the time being, or against their or any of their menial or any other servants, or any other person entitled to the privilege of Parliament of *Great Britain*; and no such action, suit, or any other process or proceeding thereupon shall at any time be impeached, stayed, or delayed, by or under colour or pretence of any privilege of Parliament. (1)

10 George III. c. 50.

Suits may be prosecuted against peers, and members of the House of Commons, and their servants, &c.

II. Provided nevertheless, and be it further enacted by the authority aforesaid, That nothing in this Act shall extend to subject the person of any of the knights, citizens, and burgesses, or the commissioners of shires and burghs of the House of Commons of *Great Britain*, for the time being to be arrested or imprisoned upon any such suit or proceedings.

'III. And whereas the process by *distringas* is dilatory and expensive; 'For remedy thereof,' be it enacted by the authority aforesaid, That the court out of which the writ proceeds, may order the issues levied from time to time to be sold, and the money arising thereby to be applied to pay such costs to the plaintiff as the said court shall think just, under all the circumstances, to order; and the surplus to be retained until the defendant shall have appeared, or other purpose of the writ be answered. (2)

Issues to be sold, &c.

(1) Mr. Gabbett properly regards this Act as superseding the provisions of 12 and 13 W. III. c. 3, as amended by 11 Geo. II. c. 24; which only admitted suits against members in the intervals of the sitting of Parliament; and 2 and 3 Anne, c. 18, admitting suits against public officers for breach of trust or misdemeanor in their office; and which Acts respectively contain a saving from personal arrest.

(2) This provision is general, and not confined to suits against persons having privilege of Parliament; Raben *v.* Plaistow, 5 Bur. 2726. See, as to proceedings by *distringas*, 51 Geo. III. c. 124, *ante*, Class 3.

No. I.
10 Geo. III.
c. 50.

IV. Provided always, when the purpose of the writ is answered, that then the said issues shall be returned; or, if sold, what shall remain of the money arising by such sale, shall be repaid to the party distrained upon.

V. And be it further declared and enacted by the authority aforesaid, That obedience may be enforced to any rule of his Majesty's Courts of King's Bench, Common Pleas, or Exchequer, against any person entitled to privilege of Parliament, by distress infinite, in case any person or persons entitled to the benefit of such rule shall choose to proceed in that way.

VI. 'And whereas an Act was made in the twelfth and thirteenth years 'of the reign of King *William* the Third, intituled, "An Act for pre-'venting any inconveniences that may happen by privilege of Par-'liament,"' be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, the said Act, and also this Act, shall extend to that part of *Great Britain* called *Scotland*.

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## [ No. II. ] 45 George III. c. 124.—An Act to amend an Act passed in the fourth Year of his present Majesty, intituled, "An Act for preventing Inconveniences arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts, being entitled to Privilege of Parliament and becoming insolvent;" and to prevent Delay in the entering Appearances in Actions brought against Persons having Privilege of Parliament.—[*12th July*, 1805.]

45 George III. c. 124.
On process by summons without affidavit, appearance may be entered for defendant.

'III. AND whereas the mode of proceeding by *distringas* is extremely dilatory and expensive,' be it therefore further enacted by the authority aforesaid, That from and after the passing of this Act, when any summons, or original bill and summons, shall be sued out against any person having privilege of Parliament, and no such affidavit shall be made and filed as in the said recited Act, and hereinbefore is mentioned, if the defendant or defendants shall not appear at the return of the summons, or within eight days after such return, in every such case it shall and may be lawful to and for the plaintiff or plaintiffs, upon affidavit being made and filed in the proper court of the personal service of such summons, which said affidavit shall be filed gratis, to enter an appearance or appearances for the defendant or defendants, and to proceed thereon as if such defendant or defendants had entered his or their appearance. (1)

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(1) For the other parts of the Act, see post., Titles *Courts of Equity* and *Bankrupts*.

# PART IV.

## CLASS VI.

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### *Pleadings and other Proceedings previous to Trial;*

(And herein of Amendments and Jeofails.)

### [ No. I. ] 14 Edward III. st. 1. c. 6.—A Record which is defective by Misprision of a Clerk, shall be amended.

'ITEM it is assented, That by the misprision of a clerk in any place wheresoever it be, no process shall be adnulled, or discontinued, by mistaking in writing one syllable, or one letter too much or too little; but as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be hastily amended in due form, without giving advantage to the party that challengeth the same because of such misprision.' 14 Edward III. st. 1. c. 6.

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### [ No. II. ] 36 Edward III. c. 15.—Pleas shall be pleaded in the *English* Tongue, and inrolled in *Latin*.

"ITEM, Because it is often shewed to the King by the prelates, dukes, earls, barons, and all the commonalty, of the great mischiefs which have happened to divers of the realm, because the laws, customs, and statutes of this realm, be not commonly known, holden and kept in the same realm, for that they be pleaded, shewed, and judged in the *French* tongue, which is much unknown in the said realm, so that the people which do implead, or be impleaded, in the King's court, and in the courts of other, have no knowledge nor understanding of that which is said for them or against them by their serjeants and other pleaders; and that reasonably the said laws and customs the rather shall be perceived and known, and better understood in the tongue used in the said realm, and by so much every man of the said realm may the better govern himself without offending of the law, and the better keep, save, and defend his heritage and possessions: And in divers regions and countries, where the King, the nobles, and other of the said realm have been, good governance and full right is done to every person, because that their laws and customs be learned and used in the tongue of the country;" 'The King, desiring the good governance and tranquillity of his people, and to put out and eschew the harms and mischiefs which do or may happen in this behalf by the occasions aforesaid, hath ordained and stablished by the assent aforesaid, that all pleas which shall be pleaded in any courts whatsoever, before any of his justices whatsoever, or in his other places, or before any of his other ministers whatsoever, or in the courts and places of any other lords whatsoever within the realm, shall be pleaded, shewed, defended, answered, debated, and judged in the *English* tongue, *and that they be entered and inrolled in Latin*; and that the laws and customs of the same realm, terms, and processes, be holden and kept as they be and have been before this time; and that by the ancient terms and forms of the declarations no man be prejudiced, so that the matter of the action be fully shewed in the declaration and in the writ. And it is accorded by the assent aforesaid, that this ordinance and statute of pleading begin and hold place at the fifteenth of St. *Hilary* next coming.' 36 Edward III. c. 15.

Old terms and forms shall be observed in pleading.

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* The Statutes of Set-Off and Limitations are not included, but form the subjects of the two succeeding Classes.

No. III. 6 Richard II. c. 2.

[ No. III. ] 6 Richard II. c. 2.—Writs of Debt, Accompt, &c. shall be commenced in the Counties where the Contracts were made.

'ITEM, To the intent that writs of debt and accompt, and all other such actions, be from henceforth taken in their counties, and directed to the sheriffs of the counties where the contracts of the same actions did rise; it is ordained and accorded. That if from henceforth in pleas upon the same writs it shall be declared, (1) That the contract thereof was made in another county than is contained in original writ, that then incontinently the same writ shall be utterly abated.'

[ No. IV. ] 11 Henry IV. c. 3.—Records shall not be amended or impaired after Judgment inrolled.

11 Henry IV. c. 3. Justices of assise shall deliver into the treasury the records of assise, &c. every second year.

'ITEM, It is ordained and stablished, That the justices assigned, and to be assigned to take assizes by commission of our Lord the King in the counties of the realm, from henceforth shall cause to be delivered fully in the King's treasury, all the records of assizes of *novel disseisin*, of *mortdancester*, and of certifications, with all the appurtenances and appendances before them determined, every second year, that the plea thereof be determined, and judgment given without more delay. And that the records and process of pleas real and personal, and of assises of *novel disseisin*, or *mortdancester*, and certifications, and of others, whereof judgment is given and inrolled, or things touching such plea, shall in no wise be amended nor impaired by new entering of the clerks, or by the record or thing certified in witness or commandment of any justice, in no term after that such judgment in such pleas is given and inrolled.'

[ No. V. ] 9 Henry V. st. 1. c. 4.—The Justices may amend Defaults in Records or Process after Judgment given.

9 Henry V. st. 1. c. 4.

'ITEM, Whereas it was ordained and stablished in the statute made the fourteenth year of King *Edward* the Third after the conquest, that for misprision of the clerk in any place wheresoever it be, the process of the plea should not be avoided nor discontinued, by mistaking in writing one letter or syllable too much or too little, but as soon as the thing is perceived, by challenge of the party, or in other manner, it should hastily be amended in a due form, without giving advantage to the party that challengeth the same because of such misprision;' the King our Sovereign Lord, considering the diversity of opinions which have been upon the said statute, and to put the thing in more open knowledge, hath declared and ordained at this time, by authority of this present Parliament, That the justices before whom such plea or record is made, or shall be depending, as well by adjournment, as by way of error, or otherwise, shall have power and authority to amend such record and process, as afore is said, according to the form of the same statute, as well after judgment in any such plea, record, or process given, as before judgment given in any such plea, record, or process, as long as the same record and process is before them, in the same manner as the justices had power to amend such record and process before judgment given by force of the said statute made in the time of

(1) This Act only applies if it appear by the record that the contract was in another county, and as contracts are now not dated at any particular place, it can merely happen that it should appear in the declaration that the contract was made in another county, and therefore, notwithstanding the statute, action of debt, &c. may still be brought in any county, as before; Wms. *n.* 1 Saund. 73. As to changing the venue upon affidavit; vi. *ibid.* and Tidd's Practice, C. 25.

'the said King *Edward*. And that this ordinance endure till the Parliament that shall be first holden after the return of our Sovereign Lord the King into *England* from beyond the sea.'

No. V.
9 Henry V.
st. 1. c. 4.

Made perpetual by 4 H. 6. c. 3. 8 H. 6. c. 12. 15.

## [No. VI.] 4 Henry VI. c. 3.—Justices in certain Cases may amend their Records according to former Statutes.

4 Henry VI. c. 3.
9 H. 5. c. 4.

"ITEM, Whereas at the Parliament holden at *Westminster* the second day of *May*, the ninth year of the reign of King *Henry*, father of our Lord the King that now is, it was rehearsed, how that at the Parliament holden at *Westminster* the xiv. year of King *Edward* the Third, it was ordained by the authority of the said Parliament, That for misprision of a clerk, in whatsoever place it be, no process or plea should be undone nor discontinued, by oversight in writing a letter or syllable too much or too little, but as soon as the thing were perceived by challenge of the parties, or in other manner, it should be hastily amended in due form, without giving advantage to the party that challengeth the same because of such misprision; the said late King *Henry*, considering the diversities of opinions which men had upon the said statute, and to put the thing in more open knowledge, did declare and ordain by authority of the said Parliament holden the said ninth year, That the justices before whom such plea or record is made, or shall be depending, as well by adjournment, as by way of error, or otherwise, shall have power and authority to amend such record and process, as well after judgment given as before, by force of the said statute made in the time of the said King *Edward*, which ordinance should endure till the next Parliament, which should be first holden after the return of the said King *Henry* the father into *England* from beyond the sea, and which now is determined by the death of the said late King *Henry* the Father;" 'Our Sovereign Lord, by the advice and assent aforesaid, hath ordained and established, That the said statute, and the effect of the same, made in the said ninth year, shall hold strength, force, and effect, in every record and process of the same, as well after judgment given upon a verdict passed, as upon a matter in law pleaded, as a statute available and effectual in law to endure for ever. Provided always, That this statute do not extend to records and processes in the parts of *Wales*, nor to records and processes whereby any person is or shall be outlawed at any man's suit.'

A confirmation of the statute of 14 Ed. 3. st. 1. c. 6. and 8 H. 5. c. 4. authorising justices to amend records.

## [No. VI a.] 8 Hen. VI. c. 12.—No judgment or record shall be reversed for any writ, process, &c. rased. What defects in records may be amended by the judges, and what not.

8 Henry VI. c. 12.

No judgment nor record shall be reversed nor avoided for any writ, return, process, &c. rased or interlined.

'ITEM, our Lord the King hath ordained and established by the authority of this present Parliament, That for error assigned, or to be assigned, in any record, process, or warrant of attorney, original writ or judicial, panel or return, in any places of the same rased or interlined, or in any addition, subtraction, or diminution of words, letters, titles, or parcel of letters, found in any such record, process, warrant of attorney, writ, panel, or return, which rasings, interlinings, addition, subtraction, or diminution, at the discretion of the King's judges of the courts and places, in which the said records or process by writ of error, or otherwise, be certified, do appear suspected, no judgment nor record, shall be reversed nor adnulled.

The judges may reform all defects in records which be misprision of the clerk.

'II. And that the King's judges, of the courts and places in which any record, process, word, plea, warrant of attorney, writ, panel, or return, which for the time shall be, shall have power to examine such records, process, words, pleas, warrants of attorney, writs, panels, or returns, by them and their clerks, and to reform and amend (in affirmance of the judgments of such records and processes) all that

No. VI a. 8 Henry VI. c. 12.

What defects in records may not be amended.

1 H. 5. c. 5.

Variance alleged between a record and the certificate thereof, shall be by the judges amended.

'which to them in their discretion seemeth to be misprision of the clerks in such record, processes, word, plea, warrant of attorney, writ, panel, and return; except appeals, indictments of treason and of felonies, and the outlawries of the same, and the substance of the proper names, surnames, and additions left out in original writs and writs of exigent, according to the statute another time made the first year of King *Henry*, father to our Lord the King that now is, and in other writs containing proclamation; so that by such misprision of the clerk no judgment shall be reversed nor adnulled. And if any record, process, writ, warrant of attorney, return, or panel, be certified defective, otherwise than according to the writing which thereof remaineth in the treasury, courts, or places, from whence they be certified, the parties in affirmance of the judgments of such record and process shall have advantage to allege, that the same writing is variant from the said certificate, and that found and certified, the same variance shall be by the said judges reformed and amended according to the first writing.

Imbezzling of a record, whereby any judgment shall be reversed, is felony.

'III. And moreover it is ordained, That if any record, or parcel of the same writ, return, panel, process, or warrant of attorney in the King's Courts of Chancery, Exchequer, the one bench or the other, or in his treasury, be willingly stolen, taken away, withdrawn, or avoided by any clerk, or by other person, because whereof any judgment shall be reversed, that such stealer, taker away, withdrawer, or avoider, their procurators, counsellors, and abettors, thereof indicted, and by process thereupon made thereof duly convict by their own confession, or by inquest to be taken of lawful men, whereof the one half shall be of the men of any court of the same courts, and the other half of other, shall be judged for felons, and shall incur the pain of felony. And that the judges of the said courts of the one bench or of the other, have power to hear and determine such defaults before them, and thereof to make due punishment as afore is said.

A record exemplified under the Great Seal, and inrolled in the Chancery, not to be reversed.

'IV. Provided always, That if any such record, process, writ, or warrant of attorney, panel, or return, or parcel of the same, be now, or hereafter shall be exemplified in the King's Chancery under the Great Seal, and such exemplification there of record inrolled without any rasing in the same place in the exemplification and the inrolment of the same, that another time for any error assigned, or to be assigned in the said record, process, writ, warrant of attorney, panel, or return, in any letter, word, clause, or matter of the same varying, or contrary to the said exemplification and the inrolment, there shall be no judgment of the said records and process reversed nor adnulled.'

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## [ No. VII. ] 8 Henry VI. c. 15.—The justices may in certain cases amend defaults in records.

8 Henry VI. c. 15.

'ITEM, it is ordained and established, That the King's justices, before whom any misprision or default is or shall be found, be it in any records and processes, which now be, or shall be depending before them, as well by way of error as otherwise, or in the returns of the same, made or to be made by sheriffs, coroners, bailiffs of franchises, or any other, by misprision of the clerks of any of the said courts of the king, or by misprision of the sheriffs, under-sheriffs, coroners, their clerks, or other officers, clerks, or other ministers whatsoever, in writing one letter or one syllable too much or too little, shall have power to amend such defaults and misprisions according to their discretion, and by examination thereof by the said justices to be taken where they shall think needful. Provided that this statute do not extend to records and processes in the parts of *Wales*, nor to the processes and records of *Outlawries* of felonies, and treasons, and the dependencies thereof.'

Processes in Wales, and outlawries.

## [ No. VIII. ] 32 Henry VIII. c. 30.—Mispleadings, Jeofails.

No. VIII. 32 Hen. VIII. c. 30.

[Inserted ante, Class II. No. 11.]

## [ No. IX. ] 18 Elizabeth, c. 14.—An Act for Reformation of Jeofails.

18 Elizabeth c. 14.

This Act extended to writs of mandamus, &c. by 9 Ann. c. 20. s. 7.

After verdict given in a court of record, there shall be no stay of judgment, or reversing thereof for want of form, false Latin, variance &c. When an attorney shall deliver his warrant of record.

BE it enacted by the Queen's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if any verdict of twelve men or more shall be hereafter given in any action, suit, bill, plaint, or demand, in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any default in form, or lack of form, touching false *Latin*, or variance from the register, or other defaults in form, in any writ original or judicial, count, declaration, plaint, bill, suit or demand, or for want of any writ original or judicial, or by reason of any imperfect or insufficient return, of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process, upon or after any *Aid prier* or *voucher*, nor any such record or judgment after verdict to be given hereafter, shall be reversed for any the defects or causes aforesaid; any law, statute or usage to the contrary notwithstanding.

To what things this statute shall not extend.

II. Provided always, and be it further enacted by the authority aforesaid, That this Act, or any thing therein contained, shall not extend to any writ, declaration, or suit, of appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason, or other matter, nor to any process upon any of them, nor to any writ, bill, action, or information, upon any popular or penal statute; any thing aforesaid to the contrary notwithstanding.

When an attorney shall enter his warrant of record.

III. Provided also, and be it enacted by the authority aforesaid, That all attornies in any suit or action in any court of record, shall deliver in the warrant of attornies in such action or suit wherein they be named attornies, to be entered or filed of record, in such manner and form as heretofore by the law or statutes in that behalf made they should or ought to have done, upon pain to forfeit ten pounds for every such offence: The one moiety thereof to be to the Queen's Majesty, her heirs and successors, and the other moiety to such officer or officers, to whom or in whose office the same warrant should be delivered, entered, or filed, and to suffer imprisonment by the discretion of the justices of the court for the time being, where any such default shall fortune to be had or made; the said ten pounds to be recovered by action of debt, bill, or information, in which no essoign, protection, or wager of law shall be allowed. 32 H. 8. c. 30. 2 & 3 Ed. 6. c. 32. 21 Jac. 1. c. 13.

## [ No. X. ] 27 Elizabeth, c. 5.—An Act for furtherance of Justice, in case of Demurrer and Pleadings.

27 Elizabeth c. 5.

Enforced by 4 Anne, c. 16.

'FORASMUCH as excessive charges and expenses, and great delay and hindrance of justice hath grown in actions and suits between the subjects of this realm, by reason that upon some small mistaking or want of form in pleadings, judgments are often reversed by writs of error, and oftentimes upon demurrers in law given otherwise than the matter in law and very right of the cause doth require, whereby the parties are constrained either utterly to lose their right, or else after long time and great trouble and expenses, to renew again their suits;' for remedy whereof, Be it enacted by the Queen's most Excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this pre-

After demurrer joined and en-

No. X.
27 Elizabeth c. 5.

sent Parliament assembled, and by the authority of the same, That from henceforth, after demurrer joined and entered in any action or suit in any court of record within this realm, the judges shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, defect or want of form in any writ, return, plaint, declaration, or other pleading, process, or cause of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express together with his demurrer; and that no judgment to be given shall be reversed by any writ of error, for any such imperfection, defect or want of form as is aforesaid, except such only as is before excepted.

tered, judgment shall be given, notwithstanding any defect in process or pleading.

What defects in form shall be amended by the court, and what not. The party demurring shall set down the causes.

The court may amend defects of form after demurrer joined.

II. And be it further enacted, That after demurrers joined and entered, the court where the same shall be, shall and may by virtue of this Act from time to time amend all and every such imperfections, defects and wants of form as is before mentioned, other than those only which the party demurring shall specially and particularly express and set down together with his demurrer as is aforesaid.

Appeal, indictment, and presentment of felony, murder, treason.

III. Provided always, and be it further enacted by the authority aforesaid, That this act, or any thing therein contained, shall not extend to any writ, declaration, or suit of appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason or other matter, nor to any process upon any of them, nor to any writ, bill, action or information upon any popular or penal statute; any thing aforesaid to the contrary notwithstanding. [This Act extended to writs of Mandamus, &c. by 9 Anne, c. 20. s. 7.]

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## [ No. XI. ] 21 James I. c. 13.—An Act for the further Reformation of Jeofails.

21 James I. c. 13.

This Act extended to writs of mandamus, &c. by 9 Anne, c. 20. s. 7.

'WHEREAS in the two and thirtieth year of the reign of King 'Henry the Eighth of famous memory, a good and profitable 'law, intituled, "An Act concerning Mispleading, Jeofails, and Attor'nies," was made and enacted: and likewise another good and profitable 'law was made in the eighteenth year of the reign of our late Sovereign 'Lady Queen *Elizabeth*, intituled, "An Act for Reformation of Jeo'fails;" by which laws many delays of judgments were prevented, and 'yet notwithstanding many things have and daily do fall out, not yet 'provided for, nor remedied by the laws beforementioned:'

The defects of the statutes of 32 H. 8. c. 30. and 18 El. c. 14.

II. Be it therefore enacted by the authority of this present Parliament, That if any verdict of twelve men or more shall hereafter be given for the plaintiff or demandant, or for the defendant or tenant, bailiff in assize, vouchee, pray in aid, or tenant by receipt, in any action, suit, bill, plaint, or demand in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any variance in form only, between the original writ or bill, and the declaration, plaint, or demand; or for lack of any averment of any life or lives of any person or persons, so as upon examination the said person be proved to be in life; or by reason that the *venire facias*, *habeas corpora*, or *distringas*, is awarded to a wrong officer, upon any insufficient suggestion; or by reason the *visne* is in some part misawarded or sued out of more places, or of fewer places, than it ought to be, so as some one place be right named; or by reason that any of the jury which tried the said issue is misnamed, either in the surname or addition, in any of the said writs, or in any return upon any of the said writs, so as upon examination it be proved to be the same man that was meant to be returned; or by reason that there is no return upon any of the said writs, so as a panel of the names of jurors be returned and annexed to the said writ; or for that the sheriff's name or other officer's name having the return thereof, is not set to the return of any such

writ, so as upon examination it be proved that the said writ was returned by the sheriff or under sheriff, or any such other officer; or by reason that the plaintiff in an *ejectione firmæ*, or in any personal action or suit, (being an infant under the age of one and twenty years,) did appear by attorney therein, and the verdict pass for him; any law, custom, or usage to the contrary notwithstanding.

No. XI. 21 James I. c. 13.

III. Provided always, and be it further enacted, That this Act, or any thing therein contained, shall not extend to any writ, declaration or suit of appeal of felony, or murther, nor to any indictment or presentment of felony, murther, or treason, nor to any process upon any of them, nor to any writ, bill, action, or information, upon any popular or penal statute; any thing therein contained to the contrary notwithstanding. 5 Geo. I. c. 13.

## [ No. XII. ] 13 Charles II. st. 2. c. 2.—An Act for prevention of Vexations and Oppressions by Arrests, and of Delays in Suits of Law.

[Inserted ante, Class III. No. 13.]

[§ 3. Nonsuit for want of a declaration before the end of the next term after appearance, and judgment and costs against the plaintiff.]

[§ 6. Delays in suits by reason of fifteen days between the teste and return of writs, remedied in actions personal.—*Ejectione firmæ.—Venire facias, Habeas corpora Jurator.—Distringas Jurator.—Fieri facias, Capias ad satisfaciendum*; where exigent lieth after judgment, or to make the bail appear, excepted.]

## [ No. XIII. ] 16 and 17 Charles II. c. 8.—An Act to prevent Arrests in Judgment, and superseding Executions *.

'WHEREAS great delay, trouble, and vexation hath been and still is occasioned to the people of this realm, as well by arresting and reversing of judgments, as by staying executions by writs of error and supersedeas:' For remedy thereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any verdict of twelve men shall be given in any action, suit, bill, or demand, to be commenced from and after the five and twentieth day of *March*, which shall be in the year of our Lord one thousand six hundred sixty and five, in any of his Majesty's courts of record at *Westminster*, or in the courts of record in the counties palatine of *Chester*, *Lancaster*, or *Durham*, or in his Majesty's Courts of the Great Sessions in any of the twelve shires of *Wales*; judgment thereupon shall not be stayed or reversed, for default in form or lack of form; or by reason that there are not pledges, or but one pledge to prosecute, returned upon the original writ; or because the name of the sheriff is not returned upon such original writ; or for default of entering pledges upon any bill or declaration; or for default of alleging the bringing into court of any bond, bill, indenture, or other deed whatsoever mentioned in the declaration, or other pleading; or for default of allegation of the bringing into court of letters testamentary or letters of administration; or by reason of the omission of *vi et armis* or *contra pacem*; or for or by reason of the mistaking of the Christian name or surname of the plaintiff or defendant, demandant, or tenant, sum or sums of money, day, month, or year, by the clerk, in any bill, declaration, or pleading, where the right name, surname, sum, day, month, or year, in any writ, plaint, roll, or record preceding, or in the same roll or record, where the mistake is committed, is or are once truly and rightly al-

16 & 17 Charles II. c. 18. This Act extended to writs of mandamus, &c. by 9 Anne, c. 20. s. 7.

In what court and cases judgment after verdict shall not be stayed for default of form in pleading.

(1) Called by Twysden, J. the Omnipotent Act, 1 Vent. 100.

No. XIII. 16 & 17 Car. II. c. 8.

leged, whereunto the plaintiff might have demurred and shewn the same for cause; nor for want of the averment of *hoc paratus est verificare*; or for *hoc paratus est verificare per recordum*; or for not alleging *prout patet per recordum*; or for that there is no right *venue*, so as the cause were tried by a jury of the proper county or place where the action is laid (1); nor any judgment after verdict, confession by *cognovit actionem*, or *relicta verificatione*, shall be reversed for want of *misericordia* or *capiatur*; or by reason that a *capiatur* is entered for a *misericordia*, or a *misericordia* is entered where a *capiatur* ought to have been entered; nor for that *ideo consessum est per curiam* is entered for *ideo consideratum est per curiam*; nor for that the increase of costs after a verdict in any action, or upon a nonsuit in replevin, are not entered to be at the request of the party for whom the judgment is given; nor by reason that the costs in any judgment whatsoever are not entered to be by consent of the plaintiff; but that all such omissions, variances, defects, and all other matters of like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered, shall be amended (2), by the justices or other judges of the courts where such judgments are or shall be given, or whereunto the record is or shall be removed by writ of error.

II. Provided always, and be it further enacted by the authority aforesaid, That this Act, or any thing therein contained, shall not extend to any writ, declaration, or suit of appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason, or other matter, nor to any process upon any of them; nor to any writ, bill, action, or information upon any penal statute, other than concerning customs and subsidies of tonnage and poundage; any thing in this Act contained to the contrary thereof in any wise notwithstanding.

In what cases execution shall not be stayed by writ of error, but upon recognizance entered according to 3 Jac. I. c. 8.

III. And be it further enacted by the authority aforesaid, That from and after the twentieth day of *March*, in the year of our Lord one thousand six hundred sixty and four, no execution shall be stayed in any of the aforesaid courts by writ of error or *supersedeas* thereupon, after verdict and judgment thereupon, in any action personal whatsoever, unless a recognizance, with condition according to the statute made in the third year of the reign of our late Sovereign Lord King *James*, shall be first acknowledged in the court where such judgment shall be given; And further that in writs of error to be brought upon any judgment after verdict in any writ of dower, or in any action of *ejectione firmæ*, no execution shall be thereupon or thereby stayed, unless the plaintiff or plaintiffs in such writ of error shall be bound unto the plaintiff in such writ of dower, or action of *ejectione firmæ*, in such reasonable sum as the court to which such writ of error shall be directed shall think fit, with condition, That if the judgment shall be affirmed in the said writ of error, or that the said writ of error be discontinued in default of the plaintiff or plaintiffs therein, or that the said plaintiff or plaintiffs be nonsuit in such writs of error, that then the said plaintiff or plaintiffs shall pay such costs, damages, and sum and sums of money, as shall be awarded upon or after such judgment affirmed, discontinuance or nonsuit had.

Proviso touching judgment in dower and *ejectione firmæ*.

IV. And to the end that the same sum and sums and damages may be ascertained, it is further enacted, That the court wherein such execution ought to be granted upon such affirmation, discontinuance or nonsuit, shall issue a writ to enquire as well of the mean profits as of the damages by any waste committed after the first judgment in dower or in *ejectione firmæ*; and upon the return thereof, judgment shall be given, and execution awarded for such mesne profits and damages, and also for costs of suit.

To what actions this Act shall not extend.

V. Provided, That this Act, nor any thing therein contained, shall not extend to any writ of error to be brought by any executor or adminis-

(1) The Act cures a trial in a wrong county, as well as a wrong venue in the right county; Craft *v.* Boite, 1 Saund. 246.; Mayor of London *v.* Cole, 7 T. R. 583.; and other cases cited in Williams's note to 1 Saund. 247.

(2) An actual amendment is never made; but the benefit of the Act is attained by overlooking the exception, B. N. P. 325.

trator; nor unto any action popular, nor unto any other action which is or hereafter shall be brought upon any penal law or statute (except actions of debt for not setting forth of tithes;) nor to any indictment, presentment, inquisition, information, or appeal; any thing hereinbefore expressed to the contrary thereof in any wise notwithstanding.

No. XIII. 16 & 17 Car. II. c. 8.

VI. Provided always, That this Act shall continue in force for three years, and to the end of the next Session of Parliament after the expiration of the said three years, and no longer. [Made perpetual by 22 and 23 Car. 2. c. 4 ]

The continuance of this Act.

## [ No. XIV. ] 4 & 5 William and Mary, c. 21.—An Act for delivering Declarations to Prisoners.

4 & 5 William & Mary, c. 21.

'WHEREAS by the course of practice in the respective courts of record at *Westminster*, after the plaintiff or plaintiffs, in any 'writ issued out of any of the said courts, have been at great charge 'to arrest the defendant or defendants upon such writ, and the defendant or defendants for want of sufficient bail, are often committed 'to gaol, and unless the plaintiff or plaintiffs shall, before the end of 'two terms, next after such arrest, cause such defendant or defendants, 'by writ of *habeas corpus*, to be removed, to be charged in the said 'respective courts with declarations of the cause of such action or actions, such prisoner or prisoners are, upon a common bail or appearance by attorney, discharged from their imprisonment, to the great 'prejudice of the plaintiffs:' For remedy whereof,

Prisoner in custody how charged.

II. Be it enacted by the King's and Queen's most Excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if now, or at any time after the five and twentieth day of *March*, one thousand six hundred ninety and three, any defendant or defendants be taken or charged in custody at the suit of any person or persons, upon any writ or writs out of any of the said courts at *Westminster*, and imprisoned, or detained in prison, for want of sureties for their appearance to the same, the plaintiff or plaintiffs, in such writ or writs, shall and may, by virtue of this Act, before the end of the next term, after such writ or process shall be returnable, declare against such prisoner or prisoners in the respective court or courts out of which the writ or writs shall issue, whereupon the said prisoner or prisoners shall be taken and imprisoned or charged in custody, and shall or may cause a true copy thereof to be delivered to such prisoner or prisoners, or to the gaoler or keeper of the prison, or gaoler in whose custody such prisoner shall be or remain: To which declaration or declarations the said prisoner or prisoners shall appear and plead; and if such prisoner or prisoners shall not appear and plead to the same, the plaintiff or plaintiffs in such cases shall have judgment in such manner as if the prisoner or prisoners had appeared in the said respective courts, and refused to answer or plead to such declaration.

In the King's Bench declaration must be *in custodia* of such a sheriff, &c.

III. And be it further enacted by the authority aforesaid, That in all declarations against any prisoner or prisoners detained in prison by virtue of any writ or process issued or to be issued out of the Court of *King's Bench*, it shall be alleged in custody of what sheriff, bailiff, or steward of any franchise, or other person having the return and execution of writs, such prisoner or prisoners shall be at the time of such declaration by virtue of the process of the said court at the suit of the plaintiffs: Which allegation shall be as good and effectual, to all intents and purposes, as if such prisoner or prisoners were in the custody of the marshal of the *Marshalsea* of our Sovereign Lord and Lady, the King and Queen.

## [ No. XV. ] 8 and 9 William III. c. 11.*—An Act for the better preventing frivolous and vexatious Suits.

## [ No. XVI. ] 4 Anne, c. 16.†—An Act for the Amendment of the Law, and the better Advancement of Justice.

## [ No. XVII. ] 10 Anne, c. 18.—An Act to give further Time for inrolling such Leases granted from the Crown, as have not been inrolled within the respective times therein limited; and for making the pleading of Deeds of Bargain and Sale inrolled, and of Fee Farm Rents, more easy.

10 Anne, c. 18.

'III. AND for supplying a failure in pleading, or deriving the title to 'lands, tenements, or hereditaments, conveyed by deeds of bar-'gain and sale, indented and inrolled according to the statute made in 'the twenty-seventh year of the reign of King *Henry* the Eighth, for 'inrolment of bargains and sales, where the original indentures of bar-'gain and sale, to be shewed forth or produced, are wanting, which 'often happens, especially where divers lands, tenements, or heredita-'ments, are comprized in the same indenture, and afterwards derived 'to different persons;' Be it further enacted by the authority aforesaid, That where in any declaration, avowry, bar, replication, or other pleading whatsoever, any such indenture of bargain and sale inrolled, shall be pleaded with a *profert in curia*, or offer to produce the same, the person or persons so pleading, shall and may produce and shew forth, and be suffered and allowed to produce and shew forth, by the authority of this Act, to answer such *profert* as well against her Majesty, her heirs and successors, as against any other person or persons, a copy of the inrolment of such bargain and sale; and such copy examined with the inrolment, and signed by the proper officer, having the custody of such inrolment, and proved upon oath to be a true copy, so examined and signed, shall be of the same force, and effect, to the intents and constructions of law, as the said indentures of bargain and sale were and should be of, if the same were in such case produced and shewn forth.

If a bargain and sale be pleaded, a copy thereof, proved on oath, shall be of the same effect as the original.

'IV. And for as much as the fee farm rents, and other rents purchased 'under an Act of Parliament made in the twenty-second year of the 'reign of King *Charles* the second, intituled, "An Act for the advance-'ing the sale of fee farm rents, and other rents," and one other Act 'made in the twenty-second and twenty-third year of the same reign, 'intituled, "An Act for vesting certain fee farm rents, and other 'small rents, in trustees," cannot always be so fully and particularly 'described, as may be requisite for conveying or pleading the same:' For the better deriving and pleading the title to such rents, from the trustees appointed for selling thereof, pursuant to either of the said Acts, and clearing all doubts relating to the naming or describing thereof; Be it enacted and declared by the authority aforesaid, That where any rent or rents, intended by the said Acts, or either of them, to be sold, and sold pursuant thereto, is, are, or shall be named or

Where any fee farm rents, sold pursuant to 22 Car. 2. c. 6., and 22 and 23 Car. 2. c. 24, are described in any deed, &c. as they were in the indentures of bargain and sale by the trustees, such descriptions shall serve.

* This Act, which contains the provision as to assigning breaches in actions upon bonds, will be inserted post., Class XII.

† See this Act, with Notes, Part II. Class I. No. XXIII.—An intention was there intimated of repeating the title of the Act at this place, and introducing such observations as might appear to be material with respect to any alterations in the proceedings of courts of law. In attempting to fulfil that undertaking, I have been induced to enter into the general question of the propriety and expediency of departing from the existing jurisprudence of the country, with more particularity than the immediate subject may seem to require. The discussion will be found in the Appendix, No. 2.

described in any deeds, fines, recoveries, or other assurances, or in any declaration, bar, avowry, replication, or other pleading whatsoever, by such or the like names or descriptions, as the same were named or described by in the indentures of bargain and sale made by the trustees for sale thereof, pursuant to the said Acts, or either of them, such names or descriptions may serve, and are and shall be sufficient for the conveying, deriving, or pleading the title to such rent or rents from or under the said trustees, and shall be at all times deemed, judged, and allowed so to be, in all courts of law, or elsewhere.

No. XVII. 10 Anne, c. 18.

V. Provided always, That nothing in this Act contained, shall extend to give or allow any benefit or advantage in pleading or deriving title to any rent which hath not been paid or levied within twenty years next before the time of such pleading or deriving title to the same.

Not to extend to rent which has not been paid in twenty years.

## [ No. XVIII. ] 5 George I. c. 13.—An Act for the Amendment of Writs of Error; and for the further preventing the arresting or reversing of Judgments after Verdict.

'I. WHEREAS great delay of justice hath of late years been occasioned by defective writs of error, which as the law now stands 'are not amendable:' For remedy thereof, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all writs of error, wherein there shall be any variance from the original record, or other defect, may and shall be amended and made agreeable to such record, by the respective courts where such writ or writs of error shall be made returnable; and that where any verdict hath been or shall be given in any action, suit, bill, plaint, or demand, in any of his Majesty's courts of record at *Westminster*, or in any other court of record within *England* or *Wales*, the judgment thereupon shall not be staid or reversed for any defect or fault, either in form or substance, in any bill, writ original or judicial, or for any variance in such writs from the declaration or other proceedings.

5 George I. c. 13.

Writs of error varying from record may be amended.

And after verdict no judgment stayed or reversed for defect, in any bill, writ, &c.

II. Provided nevertheless, That nothing in this Act contained shall extend, or be construed to extend, to any appeal of felony or murder, or to any process upon any indictment, presentment or information of or for any offence or misdemeanor whatsoever.

Not to extend to appeals of felony, &c.

## [ No. XIX. ] 4 George II. c. 26.—An Act that all Proceedings in Courts of Justice within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* Language.

'WHEREAS many and great mischiefs do frequently happen to the 'subjects of this kingdom, from the proceedings in courts of 'justice being in an unknown language, those who are summoned and 'impleaded having no knowledge or understanding of what is alleged 'for or against them in the pleadings of their lawyers and attornies, 'who use a character not legible to any but persons practising the law:' To remedy these great mischiefs, and to protect the lives and fortunes of the subjects of that part of *Great Britain* called *England*, more effectually than heretofore, from the peril of being ensnared or brought in danger by forms and proceedings in courts of justice, in an unknown language, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons of *Great Britain* in Parliament assembled, and by the authority of the same, That from and after the twenty-fifth day of *March*, One thousand seven hundred and thirty-three, all writs, process and returns thereof, and proceedings thereon, and all pleadings, rules,

4 George II. c. 26.

This Act extended to Wales by 6 Geo. 2. c. 14.

No. XIX. 4 George II. c. 26.

All proceedings in courts in England, or Exchequer in Scotland, to be in English, and in words at length.

orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, and all patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all proceedings of courts leet, courts baron and customary courts, and all copies thereof, and all proceedings whatsoever in any courts of justice within that part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, and which concern the law and administration of justice, shall be in the *English* tongue and language only, and not in *Latin* or *French*, or any other tongue or language whatsoever, and shall be written in such a common legible hand and character, as the Acts of Parliament are usually ingrossed in, and the lines and words of the same to be written at least as close as the said Acts usually are, and not in any hand commonly called *Court Hand*, and in words at length, and not abbreviated; any law, custom, or usage heretofore to the contrary thereof notwithstanding; And all and every person or persons offending against this Act, shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same, by action of debt, bill, plaint, or information in any of his Majesty's Courts of Record in *Westminster Hall*, or Court of Exchequer in *Scotland* respectively, wherein no essoin, protection, or wager of law, or more than one imparlance shall be allowed.

Penalty 50*l.*

Altered by 6 Geo. 2. c. 14. s. 5.

Mistranslation before 25 March 1733, may be amended before or after judgment.

II. And be it further enacted by the authority aforesaid, That mistranslation, variation in form by reason of translation, mispelling or mistake in clerkship, or pleadings or proceedings begun or to be begun before the said twenty-fifth day of *March*, One thousand seven hundred and thirty-three, being part in *Latin* and part in *English*, shall be no error, nor make void any proceedings by reason thereof; but that all manner of mistranslation, errors in form, mispellings, mistakes in clerkship, may at any time be amended, whether in paper or on record or otherwise, before or after judgment, upon payment of reasonable costs only.

Not to extend to the certifying proceedings in Court of Admiralty.

III. Provided always, That nothing in this Act, nor any thing herein contained, shall extend to certifying beyond the seas any case or proceedings in the court of admiralty; but that in such cases the commissions and proceedings may be certified in *Latin* as formerly they have been.

Statutes for reforming delays by *jeofails*, to be extended to the English forms.

'IV. And whereas several good and profitable laws have been enacted, 'to the intent that the parties in all manner of actions and demands 'might not be delayed and hindered from obtaining the effect of their 'suits, after issue tried and judgment given, by reason of any subtle, 'ignorant or defective pleadings, nor for any defect in form, commonly 'called *jeofails*;' It is hereby enacted and declared, That all and every statute and statutes for the reformation and amending the delays arising from any *jeofails* whatsoever, shall and may extend to all and every form and forms, and to all proceedings in courts of justice (except in criminal cases) when the forms and proceedings are in *English*; and that all and every error and mistake whatsoever, which would or might be amended and remedied by any statute of *jeofails*, if the proceedings had been in *Latin*, all such errors and mistakes of the same and like nature, when the forms are in *English*, shall be deemed and are hereby declared to be amended and remedied by the statutes now in force for the amendment of any *jeofails*; and this clause shall be taken and construed in all courts of justice in the most ample and beneficial manner, for the case and benefit of the parties, and to prevent frivolous and vexatious delays.

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[ No. XX. ] 6 George II. c. 6.—An Act for obviating a Doubt which may arise upon an Act made in the fourth Year of his present Majesty's Reign, intituled, "An Act that all Proceedings in that Part of *Great Britain* called *England*, and in the Court of Exchequer in

*Scotland*, shall be in the *English* Language," so far as the same doth or may relate to the Court of the Receipt of his Majesty's Exchequer, or to any Members or Branches thereof.

No. XX. 6 George II. c. 6.

'WHEREAS by an Act made in the fourth year of his Majesty's reign, intituled, "An Act that all proceedings in the courts of justice within that part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* language," it is amongst other things enacted, That from and after the twenty-fifth day of *March*, One thousand seven hundred and thirty-three, all writs, process and returns thereof, and proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, and all patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all proceedings of courts leet, courts baron and customary courts, and all copies thereof, and all proceedings whatsoever in any courts of justice within that part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, and which concern the law and administration of justice, shall be in the *English* tongue and language only, and not in *Latin* or *French*, or any other tongue or language whatsoever, and shall be written in such a common legible hand and character as the Acts of Parliament are usually ingrossed in, and the lines and words of the same to be written at least as close as the said Acts usually are, and not in any hand commonly called *Court Hand*, and in words at length and not abbreviated: And whereas a doubt may arise, whether the proceedings in the court of the receipt of his Majesty's Exchequer are or may be comprehended or included within the said Act, or any general words therein contained;' For obviating the said doubts, Be it declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said Act, or any thing therein contained, shall not extend, or be construed, deemed or taken to extend to the said court of the receipt of his Majesty's Exchequer, or to any proceedings therein, or to any members or branches thereof.

6 Geo. II. c. 6.

The Act 4 Geo. 2. c. 26. directing proceedings in law to be in English, not to affect the Court of Receipt of the Exchequer.

II. And be it further enacted by the authority aforesaid, That the said court of receipt and the several members thereof, and their under officers, deputies and clerks, shall carry on the business to them severally and respectively belonging and appertaining, according to the usual course and ancient method and practice, and in like manner as if the said Act had never been made; any thing therein to the contrary thereof in any wise notwithstanding.

The business of the said court to be carried on according to the ancient method.

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[ No. XXI. ] 6 George II. c. 14.—An Act for the more effectual preventing frivolous and vexatious Arrests, and for the more easy Recovery of Debts and Damages, in the Courts of Great Sessions in the principality of *Wales*, and in the Court of Assize in the County Palatine of *Chester*, and for the obviating a Doubt which has arisen upon an Act made in the fourth Year of his present Majesty's Reign, intituled, "An Act that all Proceedings in Courts of Justice, within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* Language," so far as the same Act doth or may relate to the Courts of Justice holden within the said Principality, and for explaining and amending the said Act.

No. XXI. 6 George II. c. 14.

6 Geo. II. c. 14. 5 Geo. 2. c. 7. 12 Geo. 1. c. 29.

'WHEREAS in and by an Act made in the fifth year of his present 'Majesty's reign, intituled, "An Act to explain, amend and 'render more effectual an Act made in the twelfth year of the reign of 'his late Majesty King *George* the First, intituled, 'An Act to prevent 'vexatious arrests,'" it is *(inter alia)* enacted, That where the cause of 'action should not amount to the sum of ten pounds or upwards, 'in any superior court, the writ, process, declaration and all other 'proceedings should be in the *English* tongue, and written in words at 'length, in a common legible hand and character, and the defendant or 'defendants in such cases (a copy of such process in *English* having been 'served, as by the said Act is directed) shall appear at the return 'thereof, or within eight days after such return: And whereas the 'courts of Great Sessions in the principality of *Wales*, and the court of 'assize in the county palatine of *Chester*, are held only for and during 'the space of six days,' Therefore for the more effectual and speedy determination of all actions personal, to be commenced in the said courts of Great Sessions, and the said court of assize respectively, where the debt or damages expressed in the said process, or declared for, do not amount to the sum of ten pounds, Be it enacted therefore by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all such personal actions where the debt or damages as aforesaid, shall not amount to the sum of ten pounds, to be commenced in the courts of Great Sessions and assize, and where the plaintiff or plaintiffs, in such action or actions, shall sue out an original writ or process, and serve the defendant or defendants with a true copy thereof, by a literate person, at least eight days before the commencement of the said courts of Great Sessions and assize respectively, and shall cause on every copy of such process to be written the notice in the said Act specified and directed, the defendant or defendants in such cases shall appear at the return of such original writ or process, or at or before the third court to be held in the same respective courts of Great Sessions and assize, and in case the said defendant or defendants shall not appear at the return of the said original writ or process, or at or before the said third court, that then it shall and may be lawful to and for the plaintiff or plaintiffs, or his or their attorney, upon affidavit being made and filed in the proper court, of the personal service of such writ or process as aforesaid (which said affidavit shall be filed in the said court, and for the filing whereof there shall be paid the sum of one shilling to the proper officer, and no more,) to enter an appearance for such defendant or defendants, and to proceed thereon as if the defendant or defendants had entered his, her, or their appearance to such action or actions; any law or usage in the said courts of Great Sessions or of assize to the contrary notwithstanding.

In personal actions under 10*l.* on original writ and service, &c.

and defendant's non-appearance at the third court, plaintiff, &c. on affidavit of service, may enter appearance for him.

5*s.* only for copy and service.

II. Provided always, no attorney, bailiff, or other person, shall have, take, charge, or demand more than the sum of five shillings for the making and serving a copy of such original writ or process issuing out of such courts of Great Sessions or of assize, on such defendant or defendants respectively as aforesaid.

4 Geo. 2. c. 26. extended to Wales.

'III. And whereas doubts have arisen whether an Act made in the 'fourth year of his present Majesty's reign, intituled, "An Act that all 'proceedings in courts of justice within that part of *Great Britain* called '*England*, and in the Court of Exchequer in *Scotland*, shall be in the '*English* language," doth extend to the said courts of Great Sessions 'and other courts in the principality of *Wales*, the said courts of Great 'Sessions, and the said other courts in the said principality, not being 'therein mentioned;' For the removing and obviating of such doubts, Be it further enacted, and it is hereby declared, That the said last mentioned Act, and all clauses and directions therein, shall be deemed and taken, and is and are hereby directed to be deemed and taken, to extend to the said courts of Great Sessions, and all other courts within the said principality of *Wales*, in as large, ample and beneficial

manner as if the said courts of Great Sessions, and the said other courts in the said principality had been particularly mentioned and expressed in the said Act.

No. XXI. 6 George II. c. 14.

IV. And it is hereby further enacted, That where any person or persons shall offend against the said last mentioned Act in the said courts of Great Sessions, or the said other courts in *Wales*, that the penalty expressed in the said Act to be forfeited and paid for such offence, shall and may be sued for and recovered by such person who shall sue for the same, by action of debt, bill, plaint, or information, either in any of his Majesty's courts of record in *Westminster*, as by the said Act is directed, or in the court of Great Sessions held for the county where the same offence shall be committed, wherein no essoign, protection, or wager of law, or more than one imparlance shall be allowed.

Penalties for offences there against the said Act, where to be recovered.

V. And be it further enacted by the authority aforesaid, That all writs, process, and returns thereof, and proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines, and recoveries, and all proceedings relating thereunto, and all proceedings of courts leet, courts baron, and customary courts, and all copies thereof, and all proceedings whatsoever, in any courts of justice within *England*, *Wales*, and the town of *Berwick-upon-Tweed*, and in the Court of Exchequer in *Scotland*, and which concern the law and administration of justice, may from and after the twenty-fifth day of *March*, One thousand seven hundred and thirty-three, be written or printed in a common legible hand and character, and with the like way of writing or printing, and with the like manner of expressing numbers by figures, as have been heretofore or are now commonly used in the said courts respectively, and with such abbreviations as are now commonly used in the *English* language, and that no penalty or punishment shall be incurred, by virtue of the said recited Act, for any other offence than for writing or printing any of the proceedings, or other the matters and things abovementioned, in any hand commonly called *Court Hand*, or in any language, except the *English* language; nor shall any such penalty or punishment be extended to the expressing the proper or known names of writs or other process or technical words in the same language as hath been commonly used, so as the same be written or printed in a common legible hand and character, and not in any hand commonly called *Court Hand*; and that all prosecutions for offences against the said Act shall be commenced within three months after the same shall be committed; and that the several officers in the several offices of the King's and the Lord Treasurer's Remembrancer, and in the offices of the Clerk of the Pipe, and the clerk of estreats in his Majesty's Court of Exchequer, shall and may write and send out, in process for his Majesty's service, rolls or schedules of all such debts as have been forfeited and became due and owing to his said Majesty, before the said twenty-fifth day of *March*, One thousand seven hundred and thirty-three, in the same manner they used to do, provided the writ or process to be annexed to the said rolls or schedules shall be in the *English* tongue, and in a common legible hand, and according to the direction of the said recited Act; any thing in the said Act made in the fourth year of his present Majesty's reign, or any other law or statute to the contrary thereof in anywise notwithstanding.

No penalty to be incurred for abbreviations, nor technical terms, &c.

Prosecutions within three months.

Process of the pipe office, &c. may be issued as formerly.

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## [ No. XXII. ] 14 George II. c. 17.—An Act to prevent Inconveniences arising from Delays of Causes after Issue joined.

14 Geo. II. c. 17. Preamble.

WHEREAS many great inconveniences have arisen to the subjects of this kingdom by means of delaying the trials of causes be-

No. XXII. 14 George II. c. 17.

On the plaintiff's neglect to bring on an issue to trial, the court may give judgment as in case of nonsuit.

'tween party and party after issue joined;' For remedy whereof, may it please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That where any issue is or shall be joined in any action or suit at law (1) in any of his Majesty's Courts of Record at *Westminster*, the Court of Great Session for the Principality of *Wales*, the Court of Great Session for the County Palatine of *Chester*, the Court of Common Pleas for the County Palatine of *Lancaster*, or the Court of Pleas for the County Palatine of *Durham*, and the plaintiff or plaintiffs in any such action or suit hath or have neglected, or shall neglect, to bring such issue on to be tried according to the course and practice of the said courts respectively, (2) it shall and may be lawful for the judge or judges of the said courts respectively, at any time after such neglect, upon motion made in open court (due notice having been given thereof), (3) to give the like judgment for the defendant or defendants in every such action or suit, as in cases of nonsuit, unless the said judge or judges shall upon just cause (4) and reasonable terms allow any further time or times for the trial of such issue; and if the plaintiff or plaintiffs shall neglect to try such issue within the time or times so allowed, then, and in every such case, the said judge or judges shall proceed to give such judgment as aforesaid.

Judgment given by this Act to have the like force as judgments on nonsuit.

II. Provided always, and be it enacted by the authority aforesaid, That all judgments given by virtue of this Act shall be of the like force and effect as judgments upon nonsuit, (5) and of no other force or effect.

Defendant on such judgment to have costs.

III. Provided also, That the defendant or defendants shall upon such judgment be awarded his, her or their costs, in any action or suit where he, she, or they would upon nonsuit be entitled to the same, and in no other action or suit whatsoever. (6)

Defendant living 40 miles off shall have ten days' notice of trial.

IV. And be it further enacted by the authority aforesaid, That from and after the first day of *May* One thousand seven hundred and forty-one, no indictment, information, or cause whatsoever shall be tried at

(1) The Act extends to actions brought by executors; Howard *v.* Rutborne, Willes 316: to *qui tam* actions; Watson *v.* Jackson, 1 Wils. 325; Stone *v.* Farey, 1 E. 554: to the traverse of the return to a *mandamus;* Wigan *v.* Holmes, Sayer, 110; R. *v.* Mayor of Stafford, 4 T. R. 689: not to *replevin*, in which either party may carry down the record; Eggletin *v.* Swart, 1 Bl. Rep. 375.

(2) Where the plaintiff has once carried down the cause for trial, the defendant cannot have judgment, as in case of a nonsuit, for not carrying it down again; as, where the plaintiff was nonsuited, and the nonsuit set aside; King *v.* Pippett, 1 T. R. 492: where the cause was made a *remanet;* Mowburn *v.* Langley, 3. T. R. 1: where a new trial had been granted; Porzelius *v.* Maddocks, 1 H. B. 101. There may be such judgment where the plaintiff withdraws his record, after entering it for trial; Burton *v.* Harrison, 1 E. 346.

(3) In the King's Bench the rule to shew cause has been held a sufficient notice; Loft, 265: but in Gooch *v.* Pearson, 1 H. B. 528, where the rule had been set aside on a peremptory undertaking, it was held by the C. B. that notice must be given of a motion for judgment, for not proceeding to trial pursuant to such undertaking, although notice had been given of the former motion.

(4) In Mallet *v.* Hilton, 2 H. B. it was laid down by the Court of C. B., that a peremptory undertaking should be sufficient in case of a first default. The Court of King's Bench requires an affidavit of excuse; but a very slight excuse is sufficient, even in case of a *qui tam* action; Stone *v.* Farey, 1 E. 554. The insolvency of the plaintiff is a sufficient cause, and a peremptory undertaking, under the circumstances, was not required; Fisher *v.* Hancock; 36 Geo. III., Tidd's Practice, c. 34. The insolvency of the defendant; Bailey *v.* Wilkinson, Doug. 671: but the court in this case will make the plaintiff give a peremptory undertaking, or consent to a *stet processus;* Tidd, *ibid.:* the refusal of a broker, who had negotiated an illegal contract, to give evidence, although his liability to procedure would extend beyond the time at which the plaintiff would be bound to try in pursuance of his undertaking; Raynes *v.* Spicer, 7 T. R. 178. The court will not open the matter after the rule has been discharged upon affidavit, falsifying the affidavit of excuse; Davies *v.* Cottle, 3 T. R. 405.

(5) Such judgment cannot be given in favour of one defendant, where another has suffered judgment by default; as in such case there could not be any nonsuit; Weller *v.* Goyton, 1 Bur. 358; Gosse *v.* Macauley and others, Tidd's Practice, ch. 34.

(6) No costs therefore can be given in a judgment, as in case of a nonsuit, against an executor; Willes, 316.

*nisi prius* before any judge or justices of assise or *nisi prius*, or at the sittings in *London* or *Westminster*, where the defendant or defendants reside above forty miles from the said cities respectively, unless notice of trial in writing has been given at least ten days before such intended trial.

No. XXII. 14 George II. c. 17.

Notice of trial may be countermanded six days before the trial intended.

V. And be it further enacted by the authority aforesaid, That in case any party or parties shall have given such notice of trial as aforesaid, and shall not afterwards duly countermand the same in writing, at least six days before such intended trial, every such party shall be obliged to pay unto the party or parties to whom such notice of trial shall have been given as aforesaid, the like costs and charges as if such notice of trial had not been countermanded.

# PART IV.

## CLASS VII.

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### *Set Off* *.

* ALTHOUGH the enactments included in this Class consist only of two sections, included in Acts of which the provisions were temporary, containing regulations to the same effect with those which were permanently enacted by 32 Geo. II. c. 28, (*ante*, Class II. No. 29), the importance of the subject seemed to render it desirable, that they should occupy a distinct place in the present collection.

The following general view of the law of Set-Off has already been published in the Appendix to the translation of Pothier's Treatise on Obligations. The additional passages are contained in brackets.

" It is evidently a principle of natural reason and justice, that when two parties are mutually indebted, the balance only shall be paid; and that one of the parties shall not be compellable to pay the debt which he has incurred, and be left to sue for that to which he is entitled. This principle forms an essential part of the civil law: and the effect of such mutual debts, in destroying each other, is distinguished by the term *compensation;* the extinction or reduction of the one debt ensues immediately, and by operation of law upon the other, being contracted.

" By the common law of England, if the plaintiff was indebted to the defendant in as much or more than the defendant was indebted to him, it was no defence. Until the reign of Queen Anne, if a person who owed me 1000*l.* became a bankrupt, and I was indebted to him in 50*l.*, I must have paid the 50*l.*, and have been left to my chance of any dividend upon my larger demand; or, reversing the account, I must have paid the 1000*l.* entire, and have taken my chance of the dividend upon the 50*l.* If my debtor in the larger sum died, I must still have paid the debt due from myself, possibly for the satisfaction of his specialty creditors, and might have entirely lost the whole of my cross demand. The natural good sense of mankind was first shocked at this in the case of bankrupts, and it was provided for by 4 Anne, c. 17. § 11, and 5 Geo. II. c. 30. § 28. Where there was no bankruptcy, the injustice of not setting off (especially after the death of either party) was so glaring, that Parliament interposed, by the Acts of the 2 and 8 of Geo. II. and in any actions where there are mutual debts, the defendant may *set off* the debt due to himself, against that for which he is sued. Before the statutes which have been mentioned, where the nature of the employment, transaction or dealings, necessarily constituted an account, consisting of receipts and payments, debts and credits, the balance only was considered as the debt, and could only be recovered.—*Vid.* Green *v.* Farmer, 4 Burr. 2214.

" The doctrine which was thus introduced into the law of *England* partakes very much of the nature of *compensation* in civil law; but there is this material difference, that the debts are not in themselves and of right balanced and extinguished; that the right of *Set-off* is merely a defence to an action for the debt; that a defendant is not obliged, in any instance, to avail himself of this right, but may at his option pay, or on other grounds contest, the one debt, and bring a separate action for the other. If the creditor, to whom the larger debt is due, brings an action in which the other does not set off his mutual demand, but brings a counter-action, the debt due to the first may be set off in the action by the last, and is not extinguished by his first obtaining a verdict for his whole debt; and he may take advantage of it in the action against him, remitting so much of what he has recovered, as will reduce it to the balance; Baskerville *v.* Brown, *et e contra*, 2 Burr. 1229.

" The principle that the debt is not extinguished by the right of set-off, is strongly illustrated by the case of Pitts *v.* Carpenter, 1 Wils. 19. in which it was held that the plaintiff, to whom a larger debt than 40*s.* was originally due, but whose demand was reduced by set-off to less than that sum, might bring his action in a superior court, and was not within the provisions of a local Act, confining debts for less than 40*s.* to an inferior jurisdiction. [In the case of an extent, the debt due from a third person to a debtor of the crown is levied without any regard to the subsistence of a mutual debt, which might be set off, as between the debtor and creditor. This, like many other parts of the law of extent, certainly requires correction.]

" In the law of England, as in the civil law, the right of compensation or set-off, is confined to debts; one injury cannot be balanced against another, nor an injury against a debt; Freeman *v.* Hyett, 1 Bl. Rep. 394. Neither can unliquidated damages, for not performing an agreement, be set off, either against another demand of a similar nature, or a debt; Howlett *v.* Strickland, Cowp. 56; Woigall *v.* Waters, 6 T. R. 488; or *vice versa*, a debt against these; Bull. N. P. 181. And this rule applies even when there is a bond with a penalty, which in point of form constitutes a debt, but the payment of which as such cannot be effectively enforced; Nedriffe *v.* Hogan, Bull. N. P. 180. It may be added, that upon a bond for the payment of money,

the money secured, and not the penalty of the bond, is for the purposes of set-off considered as the debt; 8 G. II. c. 24. And by setting off any money due under such a bond (as the arrears of an annuity), the bond is not extinguished. But certain stipulated damages which are precisely due according to the terms of a contract, or a penalty to which the defendant has become absolutely entitled, may be set off, these being certain liquidated debts; Fletcher *v.* Dyke, 2 T. R. 32. It was ruled, in Eland *v.* Karr, 1 East, 375, that it was no answer to a plea of set-off, that the defendant promised to pay the plaintiff in ready money. [And in Carnforth *v.* Rivett, 2 M. and S. 510. in an action for goods sold, the defendant, upon notice of set-off, proved a bill of exchange accepted by the plaintiff, and which came to the hands of the plaintiff after the sale of the goods. It appeared that when the plaintiff demanded the money, he told him that his situation was very precarious, or he would not have sold the goods so cheap; but he was to have ready money; which the defendant admitted. The court held that the plaintiff should have resisted the taking away of the goods without ready money, which he would have had a right to do by his agreement; but that by suffering the defendant to have them without payment, he had receded from his agreement. If he once parts with them on credit, he lets in a set-off. See this case cited *infra*, on another point.]

"The mutual debts must be due in the same right, and therefore a person cannot set off a demand in his own right against one, for which he is sued as executor, or the reverse; stat. 22 Geo. II. c. 22. s. 13. When a person continues tenant, or receiver to executors, after a testator's death, he cannot set off against debts contracted by him in that capacity, debts due from the testator in his life-time; Shipman *v.* Thomson, Bull. N. P. 180; Tegetmyer *v.* Lumley, Willes, 261; Montague on Set-off, 32. Also if a debt is due to, or from several persons jointly, there can be no set-off on account of the debt of either of them singly; and a debt to or from a man in his own right cannot be set off against a debt in right of his wife. To this principle, and also to the public nature of the trust reposed in the assignees of a bankrupt, may be referred the decision that such an assignee cannot retain a dividend due to one of the creditors, by setting off a debt from the creditor to himself; Brown *v.* Bullen, Doug. 407.

"But where two persons are indebted *jointly and severally*, that engagement as being several may be set off against the debt claimed by either of them individually; Fletcher *v.* Dyke, 2 T. R. 32. Also, a debt from or to a surviving partner, may be set off against that for which he sues or is sued, on his own account; Slipper *v.* Stidstone, 5 T. R. 493; French *v.* Andrade, 6 T. R. 582. (1)

"It is a proposition confirmed by all the preceding cases, that a debt cannot in general be set off, unless a counter action could be maintained between the same persons, and in the same characters. But there may be some exceptions to the literal application of this rule. For instance, Bottomly sued Brook on a bond. It was held to be a good cause of set-off, that the bond was given to Bottomly, as a trustee for Chancellor, and that Chancellor was indebted to the defendant; *vid.* 1 T. R. 619. Bottomly *v.* Brook; and Winch *v.* Keely, cited *ibid.*

"A debt may be assigned: and, though no action can be maintained for it in the name of the assignee, yet as such assignments have for various purposes been recognized in courts of law, it may be reasonably inferred, that after a person has assigned the debt due to him, and notified the assignment to the debtor, he cannot set off that demand against one which may be due from himself; on the other hand, it would be reasonable to allow it to be set off, by the person to whom it was assigned; at least, against any debt contracted after notice of the assignment; and that a debt due from such person might be set off, against the action nominally brought by the original creditor: but I do not state these distinctions as having any higher authority than mere suggestion.

[It has been since held that a plea of set-off by the assignee of a bond for valuable consideration could not be supported. Lord Ellenborough said, he was much more inclined to restrain than to extend the doctrine in Bottomly *v.* Brook. Bayley J. "We have nothing to do in this place with any other legal rights;" Wake *v.* Tinkler, 16 E. 440.

In Fair, assignee of Wilson, *v.* M'Iver, 16 E. 130. the defendant purchased goods of the bankrupt, to be paid for in a bill at three months: the defendant offered in payment an acceptance of the bankrupt's own, received from P. and F. for the purpose; and the object of the transaction appeared to be, on the whole, to cover P. and F. from the expected bankruptcy. It having been held that an offer of such bill was not a performance of the contract, but a fraud; the question remained as to the defendant's right of set-off; and it was ruled that the bill could not be set off by the defendants, who took the indorsement of it, not for themselves, but for P. and F. and merely for the purpose of getting the bankrupt's goods without paying for them, and held it merely as trustees of P. and F.; and that although it was admitted that the defendants could have brought an action against Wilson on the bill, the court were of opinion that they could not set it off, not being *bona fide* holders in their own right. In the subsequent case of Cornforth *v.* Rivett, 2 M. and S. 510. (mentioned *supra* as to the principal point) in which there

(1) Where a bond was given to one of several partners in a bank, upon trust for them all, and for money advanced by the firm, it was held that the amount might be set off against a debt from the firm; Crosse *v.* Scarth, 2 M. and S. 545: and joint and separate debts may be set off against each other by special agreement; as to which see Kennedy *v.* Hossack, 2 Taunt. 170; but this does not depend upon the statutes.

was a suspicion that the defendant held a bill, which he offered to set off on behalf of another person, Lord Ellenborough said—"The Set-off may be good, though he has sold upon credit; and supposing that it could have been shewn that the bill was really the bill of one person put into the hands of another person to set off against his debt, that might have presented a different question."]

"A broker under a commission *del credere*, who is answerable for debts and losses, may set off against a debt from himself, those debts which are due to his principal, and for the amount of which he is personally liable, the transactions having passed wholly with himself; Grove *v.* Dubois, 1 T. R. 112. It has even been decided that a broker with such commission, who had paid his entire debt to the assignees of a bankrupt, was entitled to recover it back; Bize *v.* Dickason, 1 T. R. 285. And it has been held that a factor who receives goods, and is authorized to sell them in his own name, and makes the buyer debtor to himself, has a right to bring an action to compel payment: and it would be no defence to say, that as between the buyer and the principal, the buyer ought to have that money, because the principal is indebted to him in more than that sum; for the principal himself can never say that, but where the factor has nothing due to him; Drinkwater *v.* Goodwin, Cowp. 251. It seems a necessary deduction from these cases, that if a factor sells goods in his own name, and an action is brought by the principal, the buyer may set off any debt due to him from the factor; and so it has been decided; George *v.* Claggett, 7 T. R. 359. (1)

"Amongst the other effects of compensation in the civil law, as amounting in itself to a liquidation of the debt, a creditor is obliged to restore the pledge, upon contracting a debt to an equal amount, or upon contracting a debt to a smaller amount, and an offer of the balance. I conceive that the difference between compensation and set-off, as established by our modern statutes, would in this respect be material; that our right of set-off is merely a matter of defence, and is not in any case the foundation of a claim. It is established by several cases, that there can be no set-off in the case of a distress for rent; Vid. the cases cited; Sapsford *v.* Fletcher, 4 T. R. 511. Lord Kenyon there said, 'It was much to be lamented that it should have been so decided, but for the sake of certainty in the law, they must submit to those decisions, till the legislature alter the law.' The decision in the principal case was, that a sub-tenant, who, under threats of distress, had paid rent to the original lessor, might defend himself to that extent against the distress of his own landlord, the original lessee; for that it amounted not to a set-off, but a payment, which seems fully to support the distinction suggested. Upon the same principle I am strongly inclined to think, that interest is not stopped by contracting a debt, which does not carry interest; and that only the principal of such a debt can be set off against the full claim for principal and interest. Before the statutes of set-off, the question could not have arisen, and those statutes do not seem sufficiently comprehensive to produce the effect of extinguishing the debts to the extent of their concurrence.

"If a debt, barred by the statute of limitations, be pleaded as a set-off, the plaintiff may reply the statute; if it be given in evidence on a notice of set-off, it may be objected to at the trial; Bull. N. P. 180; but, perhaps, in most cases, the subsistence of the mutual accounts would be held to take the case out of the statute.

"It is now settled, contrary to former opinions, that set-off can only be maintained for such debts as were due at the commencement of the action; Evans *v.* Prosser, 3 T. R. 186.

"The courts of law exercise a summary jurisdiction, with regard to money due upon judgments, more extensive than the right of set-off under the statutes; the provisions for set-off, under the bankrupt laws, are also more extensive than the common right of set-off above-mentioned; but a particular examination of those subjects, or a view of the doctrines of pleadings, and practice respecting set-off, does not fall within the scope of the present design.

"The principles and cases relative to the law of set-off are collected in a publication by Mr. Montague, which has appeared since the preceding summary was composed."

(1) See the following cases which have arisen upon claims of set-off, in respect to transactions with brokers, but the discussion of which related rather to the nature of the broker's character in the several transactions than to any points affecting the general law of set-off: Shee *v.* Clarkson, 12 E. 507; De Gamaide *v.* Pigou, 4 Taunt. 246; Goldschmidt *v.* Lyon, 4 Taunt. 434; Minett *v.* Forrester, 4 Taunt. 541; Cumming *v.* Forrester, 1 M. and S. 494; Morris *v.* Cleasby, 1 M. and S. 576; Coster *v.* Eason, 2 M. and S. 112; Parker *v.* Beasley, 2 M. and S. 423; Morris *v.* Cleasby, 4 M. and S. 566.

## [ No. I. ] 2 George II. c. 22.—An Act for the Relief of Debtors with respect to the Imprisonment of their Persons.

2 George II. c. 22. Mutual debts to be set one against the other.

XIII. AND be it further enacted by the authority aforesaid, That where there are mutual debts between the plaintiff and defendant, or if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either

party, one debt may be set against the other, and such matter may be given in evidence upon the general issue, (1) or pleaded in bar, as the nature of the case shall require, so as at the time of his pleading the general issue, where any such debt of the plaintiff, his testator or intestate, is intended to be insisted on in evidence, notice (2) shall be given of the particular sum or debt so intended to be insisted on, and upon what account it became due, or otherwise such matter shall not be allowed in evidence upon such general issue.

No. 1. 2 George II. c. 22.

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## [ No. II. ] 8 George II. c. 24.—An Act to explain and amend an Act passed in the second Year of the Reign of his present Majesty, intituled, "An Act for the Relief of Debtors with respect to the Imprisonment of their Persons."

8 George II. c. 24. Clause in 2 G. 2. c. 22. made perpetual.

'IV. AND whereas the provision for setting mutual debts one against the other, is highly just and reasonable at all times;' Be it therefore further enacted by the authority aforesaid, That the said clause in the said first recited Act, for setting mutual debts one against the other, shall be and remain in full force for ever.

V. And be it further enacted and declared by the authority aforesaid, That by virtue of the said clause in the said first recited Act contained, and hereby made perpetual, mutual debts may be set against each other, either by being pleaded in bar, or given in evidence on the general issue, in the matter therein mentioned, notwithstanding that such debts are deemed in law to be of a different nature; unless in cases where either of the said debts shall accrue by reason of a penalty contained in any bond or specialty; and in all cases where either the debt for which the action hath been or shall be brought, or the debt intended to be set against the same hath accrued, or shall accrue, by reason of any such penalty, the debt intended to be set off, shall be pleaded in bar, in which plea shall be shewn how much is truly and justly due on either side; (3) and in case the plaintiff shall recover in any such action or suit, judgment shall be entered for no more than shall appear to be truly and justly due to the plaintiff, after one debt being set against the other as aforesaid.

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(1) This extends to every general issue, as *non est factum* in covenant; Bull. N. P. 181.

(2) The notice should be almost as certain as declaration. Debt for rent on a lease could not be set off under notice for use and occupation; Bull. N. P. 179. This was decided prior to stat. 11 Geo. II. c. 19. which gives the statute for use and occupation; but I should conceive that the statute could not make any difference when the lease was by deed; See Ord *v.* Ruspini, 2 Esp. Ca. N. P. 569; Hampton *v.* Jarratt, 2 Esp. 560. Where the general issue was pleaded without notice of set-off, the court permitted the defendant to withdraw the plea, and pleaded *de novo*, with notice; 2 Str. 1269; and this is now a settled practice.

(3) This is imperative, and upon such bond, &c. the defence can only be made by plea, and the defendant must set forth the sum due, which may be traversed; Symmons *v.* Knox, 3 T. R. 65: and the sum being laid under a *videlicet*, makes no difference; Greenwood *v.* Barret, 6 T. R. 460.

# PART IV.

## CLASS VIII.

### *Limitation of Actions.*

[See general note at the end of the title.]

### [ No. I. ] 32 Henry VIII. c. 2.—The Act of Limitation, with a proviso. (1)

32 Henry VIII. c. 2.

'FORASMUCH as the time of limitation appointed for suing of writs 'of right, and other writs of possession and seisin of men's ancestors or predecessors, or of their own possession or seisin, by the laws 'and statutes of this realm heretofore made, limited and appointed, 'extend, and be of so far and long time past, (2) that it is above the 'remembrance of any living man truly to try and know the perfect 'certainty of such things as hath or shall come in trial, or do extend 'unto the time and times limited by the said laws and statutes, to the 'great danger of men's consciences that have or shall be impanelled in 'any jury for the trial of the same; and it is also a great occasion of 'much trouble, vexation and suits to the King's loving subjects at the 'common laws of this realm; so that no man, although he and his 'ancestors, and those whose estate he or they have, have been in peace-'able possession of a long season, of and in lands, tenements and other 'hereditaments, is or can be in any surety, quietness or rest, of and in 'the same, without a good remedy and reformation be had, made and 'provided for the same:' Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That no manner of person or persons shall from henceforth sue, have or maintain any writ of right, or make any prescription, title or claim of, to or for any manors, lands, tenements, rents, annuities, commons, pensions, portions, corrodies or other hereditaments, of the possession of his or their ancestor or predecessor, and declare and allege any further seisin or possession of his or their ancestor or predecessor, but only of the seisin or possession of his ancestor or predecessor, which hath been or now is, or shall be seised of the said manors, lands, tenements, rents, annuities, commons, pensions, portions, corrodies or other hereditaments, within threescore years (3) next before the *teste* of the same writ, or next before the said prescription, title or claim so hereafter to be sued, commenced, brought, made or had.

The limitation of prescription in a writ of right.

This clause not to extend to writs of right of advowson, &c.

Limitation of prescription to actions possessory.

II. And be it further enacted by the authority aforesaid, That no manner of person or persons shall hereafter sue, have or maintain any assise or mort-ancestor, cosinage, ayel, writ of entry upon disseisin done to any of his ancestors or predecessors, or any other action posses-

(1) For cases to which the general provisions of this Act do or do not extend, see Comyns' Dig. Temps.

(2) By the ancient law from the time of Henry I.; by the Statute of Merton, 20 Henry II. c. 8, from the time of Henry II.; by the Statute of Westminster 1, 3 Edw. I. c. 39, from the time of Richard the First; 3 Bla. Com. 196.

(3) A writ of right cannot be maintained by any person without shewing an actual seisin, by taking the esplees or profits either on the demandant himself or the ancestor under whom he claims within sixty years. See observations as to the propriety of reducing the time of limitation, in general note at the end of the Title. [12]

It is a mistake to suppose that a title of sixty years is absolutely conclusive of the right; for if an estate tail is discontinued by fine, &c., a right of entry may arise at any indefinite period of time, by failure of the issue in tail, without having suffered a recovery.

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sory, upon the possession of any of his ancestors or predecessors, for any manors, lands, tenements or other hereditaments, of any further seisin or possession of his or their ancestor or predecessor, but only of the seisin or possession of his or their ancestor or predecessor, which was, or hereafter shall be seised of the same manors, lands, tenements or other hereditaments, within fifty years next before the *teste* of the original of the same writ hereafter to be brought.

Concerning suit for land of his own possession.

III. And be it further enacted by the authority aforesaid, That no person nor persons shall hereafter sue, have or maintain any action for any manors, lands, tenements, or other hereditaments of or upon his or their own seisin or possession therein, above thirty years next before the *teste* of the original of the same writ hereafter to be brought.

Avowry or cognizance for any rent, suit, or service.

IV. And be it also enacted by the authority aforesaid, That no person nor persons shall hereafter make any avowry or cognizance for any rent, suit or service, and allege any seisin of any rent, suit or service in the same avowry or cognizance, in the possession of his or their ancestors or predecessors or predecessor, or in his own possession, or in the possession of any other, whose estate he shall pretend or claim to have, above fifty years (1) next before the making of the said avowry or cognizance.

Formedons in reverter or remainder, *scire facias* upon fines.

V. And over that be it enacted by the authority aforesaid, That all formedons in reverter, formedons in remainder, and *scire facias* upon fines, of any manors, lands, tenements, or other hereditaments, at any time hereafter to be sued, shall be sued, used and taken within fifty years next after that the title and cause of action fallen, and at no time after the said fifty years passed.

Bar for default of seisin within the time of limitation.

VI. And be it also enacted by the authority aforesaid, That if any person or persons at any time hereafter do sue any of the said actions or writs, for any manors, lands, tenements, or other hereditaments, or make any avowry, cognizance, prescription, title or claim of or for any rent, suit, service, or other hereditaments, and cannot prove that he or they, or his or their ancestors or predecessors, were in actual possession or seisin of and in the same manors, lands, tenements, rents, suits, services, annuities, commons, pensions, portions, corrodies or other hereditaments, at any time or times within the years before limited and appointed in this present Act, and in manner and form as is aforesaid, if the same be traversed or denied by the party plaintiff, demandant or avowant, or by the party tenant or defendant, that then and after such trial therein had all and every such person and persons and their heirs, shall from henceforth be utterly barred for ever, of all and every the said writs, actions, avowries, cognizance, prescription, title or claim hereafter to be sued, had or made, of and for the same manors, lands, tenements, hereditaments or other the premises, or any part of the same, for the which the same action, writ, avowry, cognizance, prescription, title or claim hereafter shall be at any time had, sued or made.

A proviso for suits depending A. D. 1546.

VII. Provided alway, and be it enacted by the authority aforesaid, That all and every person and persons which now have any of the said actions, writs, avowries, *scire facias*, cognizance, prescription, title or claim depending, or that hereafter shall sue, commence, make or bring any of the said writs or actions, or make any of the said avowries, cognizances, prescription, titles or claim, at any time before the Feast of the Ascension of our Lord God, which shall be in the year of our Lord God, a thousand five hundred forty and six, shall allege the seisin of his or their ancestors or predecessors, or his own possession and seisin, and also have all other like advantages to all intents and purposes in the

(1) This limitation only applies where it is necessary to allege seisin, and not where a rent is expressly created by deed; in which case there is no limitation; 1 Inst. 115, a; Foster's case, 8 Rep. 64. But this is subject to the qualification that the certainty of the rent should appear in the deed; for if the deed only reserves such rent as the person reserving pays over, without expressing what it is, seisin is equally necessary to both rents, and both are within the statute; 1 Inst. *ub. sup.*; Collins *v.* Goodall, 2 Vern. 255; and see Stackhouse *v.* Barnston, 10 Ves. 466. As to presumptions of release or extinguishment from length of time, see the S. C., and Eldrige *v.* Knott, Cowp. 214. The statute does not attach upon a rent created originally by Act of Parliament; Fawlkner *v.* Bellingham, Cro. Car. 81.

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same writs, actions, avowries, cognizances, prescriptions, titles and claims, as he or they might have had at any time before the making of this estatute; this Act or any thing therein contained to the contrary notwithstanding.

A proviso to relieve women covert, infants within age, persons in prison, or out of the realm, at the time of this statute made.

VIII. Provided also, and be it further enacted by the authority aforesaid, That if any person or persons now being within the age of twenty-one years, or covert baron, or in prison, or out of this realm of *England*, now having cause to have, sue, commence, make or bring any of the said writs or actions, or to make any avowries, cognizances, prescriptions, titles or claims, that it shall be lawful to such person or persons being within age, covert baron, in prison, or out of this realm, to sue, commence, or bring any of the said writs or actions, or make any of the said avowries, cognizances, prescriptions, titles or claims, at any time within six years next after such person or persons now being within age, shall accomplish the age of one and twenty years, or within six years next after such person or persons now being covert baron, shall be sole, or within six years next after such person or persons, now being in prison, shall be set at his liberty, or within six years next after such person or persons now being out of this realm, shall come and be within this realm: And that every such person and persons in their said actions, writs, avowries, cognizances, prescription, titles or claims to be made, sued or commenced within the said six years, shall allege within the six years the seisin of his or their ancestors or predecessors, or of his own possession or of the possession of those whose estate he shall then claim; and also within the same six years shall have all and every like advantages to all intents and purposes in the same, as he or they might have had before the making of this Act, and as though this Act had never been had ne made; this Act nor any thing therein contained to the contrary notwithstanding.

A remedy to relieve the heirs of an infant, a woman covert, any person in prison, or out of the realm, if the party himself die before judgment.

IX. Provided also, That if it happen the said person or persons, not being within age, or covert baron, in prison, or out of this realm, having cause to sue, commence, make or bring any the said writs, actions, avowries, cognizance, prescription, title or claim, to decease within age, or being covert, as is aforesaid, or during the time he or they shall be in prison or out of this realm, or to decease within six years next after such person or persons shall accomplish his or their full ages, or shall be at large within this realm, or shall become sole, and no determination or judgment had of such titles, actions, or rights, so to them accrued; that then the next heir or heirs of such person or persons being in prison, or out of this realm, or within age, or being covert baron, so dying, shall have and enjoy all and every such liberty and advantage to sue, demand, advow, declare or make their said titles, claims or prescriptions within six years next after the death of such person or persons now imprisoned or being out of this realm, or within age, or covert de baron, in such or like manner and form to all intents and purposes as the same infant after his full age, or the said woman covert after the death of her husband, or the same person being out of this realm after his repair or coming into the same, or the said person imprisoned after his enlargement and coming out of prison, should or might have had within six years then next ensuing, by force and virtue of the provision last before rehearsed; any thing in this Act contained to the contrary thereof, in any wise notwithstanding.

A remedy for the heir, if the suit of his ancestor abate before judgment.

X. Provided also, That if any person or persons before the said Feast of the Ascension of our Lord God, which shall be in the said year of our Lord God One thousand five hundred and forty-six, commence and sue any of the said actions or writs, or make any avowry, prescription, title or claim, and the same action, writ, avowry, cognizance, prescription, title or claim happen, by the death of any of the parties to the same, to be abated before judgment or determination thereof had; that then the said person or persons, being demandants or avowants, or making any such cognizance, prescription, title or claim, being then alive, and if not, then the next heir or heirs of such person or persons so deceased, may commence and pursue his or their action and suit, and

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make his or their avowry, cognizance, prescription, title or claim, for or upon the same matter, within one year next after such action or suit abated, and shall have and enjoy all and every such liberty and advantage to sue, demand, avow, declare or make their said titles, claims or prescriptions, within the said one year, as the demandant or demandants in such suit or writ abated, or as such as did avow or make cognizance, title or claim, or prescription, should or might have done, had, used, made or enjoyed in the said former action or suit; any thing in this Act to the contrary notwithstanding.

The party grieved may have an attaint upon a false verdict given.

XI. Provided furthermore, That if any false verdict happen hereafter to be given or made in any of the said actions, suits, avowries, prescriptions, titles or claims, that then the party grieved by reason of the same shall and may have his attaint upon every such verdict so given or made, and the plaintiff in the same attaint, upon judgment for him given, shall have his recovery, execution and other advantage in like manner and form as heretofore hath been used and accustomed; any thing before in this Act contained to the contrary thereof notwithstanding.

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## [ No. II. ] 1 Mary, Session 2, c. 5.—An Act for the Limitation of Prescription in certain cases.

1 Mary, sess. 2. c. 5.

'WHERE at a Parliament holden at *Westminster*, the twenty-fourth day of *July*, in the thirty-second year of the reign of the late King of famous memory, King *Henry* the Eighth, it was enacted, That no manner of person or persons should from thenceforth sue, have or maintain any writ of right, or make any prescription, title or claim of, to or for any manors, lands, tenements, rents, annuities, commons, pensions, portions, corrodies or other hereditaments of the possession of his or their ancestor or predecessor, and declare and allege any further seisin or possession of his or their ancestor or predecessor, but only of the seisin or possession of his ancestor or predecessor which hath been, or then was or shall be seised of the said manors, lands, tenements, rents, annuities, commons, pensions, portions, corrodies or other hereditaments within threescore years next before the *teste* of the same writ, or next before the said prescription, title, or claim, sued, commenced, brought, made or had after the making of the same Act.

Certain writs and Acts whereunto the Statute of Limitation made 32 H. VIII. c. 2. shall not extend.

'II. And where also it was further enacted by the authority aforesaid, amongst other things, that no person or persons should after that make any avowry or cognizance for any rent, suit or service, or allege any seisin of any rent, suit or service, in the same avowry or cognizance, in the possession of his or their ancestors or predecessor or predecessors, or in his own possession, or in the possession of any other whose estate he should after that pretend or claim to have, above fifty years next before the making of the said avowry or cognizance.

A rehearsal of part of the stat. of 32 H. VIII. c. 2. touching limitation of prescription.

'III. And where by the same Act it was also further enacted amongst other things, That if any person or persons at any time after that, did sue any of the said actions or writs for any manors, lands, tenements or other hereditaments, or make any avowry, cognizance, prescription, title or claim of or for any rent, suit, service or other hereditaments, and could not prove that he or they, or his or their ancestors or predecessors were in actual possession and seisin of and in the same manors, lands, tenements, rents, suits, services, annuities, commons, pensions, portions, corrodies, or other hereditaments, at any time or times within the years before limited and appointed in the same Act, in manner and form as is aforesaid; that if the same seisin were traversed or denied by the party plaintiff, demandant or avowant, or by the party tenant or defendant, that then and after such trial therein had, all and every such person and persons and their heirs, should from thenceforth be utterly barred for ever of all and every the said writs, actions, avowries, cognizance, prescription, title and claim after that to be sued, had or made of and for the same

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Certain doubts moved upon the said statute of 32 H. VIII. c. 2.

'manors, lands, tenements, hereditaments or other the premises, or 'any part of the same, for the which the same action, writ, avowry, 'cognizance, prescription, title or claim should at any time be had, 'sued or made:

'IV. Upon which said Act doubt and ambiguity hath risen and been 'moved, whether a writ of right of advowson, a *quare impedit*, *jure patronatus*, or assise of *darein presentment*, may be maintained by 'any person or persons, bodies politic or corporate, whereas the same 'person or persons, bodies politic or corporate, their ancestor or predecessor, or he or they by whom he or they do claim cannot lay the 'esplees, seisin or presentment, in him or themselves, or the ancestor 'or predecessor of them or any of them, or in him or them by whom 'he or they do claim, within threescore years next before the *teste* of 'the same writ of right of advowson, *quare impedit* or assise of *darein* '*presentment*, and *jure patronatus*; And also whether any person or 'persons, bodies politic or corporate, having a seigniory by reason of 'any castles, honours, manors, lands, tenements or hereditaments of 'him or them holden by knights' service, may maintain a writ of right 'of ward, or a writ of ravishment of ward, for any castles, honours, 'manors, lands, tenements or hereditaments holden by knights' service, 'or for the body of any ward that he or they claim by reason of any 'such tenure by knights' service, whereas he or they have not been 'seised of the same services within threescore years next before the '*teste* of any such writs:' For the explanation and plain declaration whereof, and in avoiding of the said ambiguities and doubts, Be it enacted and declared by the Queen's Highness, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That the said former Act made in the said thirty-second year of the reign of the said late King *Henry*, or any article, clause, sentence, or matter therein contained, shall not extend to any writ of right of advowson, *quare impedit*, or assise of *darein presentment*, nor *jure patronatus*, nor to any writ of right of ward, writ of ravishment of ward, for the wardship of the body, or for the wardship of any castles, honours, manors, lands, tenements or hereditaments holden by knights' service, nor to the seisor of the wardship of the body of any ward or wards, or to the seisor or wardship of any castles, honours, manors, lands, tenements or hereditaments holden by knights' service; but that all and every person and persons, bodies politic and corporate, their heirs and successors, and the heirs and successors of every of them, shall and may have, maintain and pursue all and singular the said writs of right of advowson, *quare impedit*, assise of *darein presentment*, *jure patronatus*, writs of right of ward, ravishment of ward, and also seize the wardship both of the body and of the castles, honours, manors, lands, tenements and hereditaments, holden by knights' service, in like manner and form to all intents, constructions and purposes, as they or any of them should or might have done, made or pursued before the making of the said Act made in the thirty-second year, as though the same Act had never been had or made; any thing in the said former Act to the contrary notwithstanding. 21 Jac. I. c. 16. And see farther 10 W. III. c. 4. and 4 Ann. c. 16.

Certain writs and acts whereunto the said statute shall not extend.

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## [ No. III. ] 21 James I. c. 2.—An Act for the general Quiet of the Subjects against all pretences of Concealment whatsoever.

[Inserted Pt. II. Cl. XII. No. 22.]

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## [ No. IV. ] 21 James I. c. 16.—An Act for Limitation of Actions, and for avoiding of Suits in Law.

No. IV. 21 James I. c. 16.

Writs of formedon shall be sued within twenty years.

FOR quieting of men's estates, and avoiding of suits, be it enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, That all writs of *formedon in descender*, *formedon in remainder*, and *formedon in reverter*, at any time hereafter to be sued or brought, of or for any manors, lands, tenements, or hereditaments, whereunto any person or persons now hath or have any title, or cause to have or pursue any such writ, shall be sued and taken within twenty years next after the end of this present Session of Parliament: And after the said twenty years expired, no such person or persons, or any of their heirs, shall have or maintain any such writ, of or for any of the said manors, lands, tenements or hereditaments; and that all writs of *formedon in descender*, *formedon in remainder*, and *formedon in reverter*, of any manors, lands, tenements, or other hereditaments whatsoever, at any time hereafter to be sued or brought by occasion or means of any title or cause hereafter happening, shall be sued and taken within twenty years next after the title and cause of action first descended or fallen, and at no time after the said twenty years; and that no person or persons that now hath any right or title of entry into any manors, (1) lands, tenements, or hereditaments now held from him or them, shall thereinto enter, but within twenty years next after the end of this present Session of Parliament, or within twenty years next after any other title of entry accrued; and that no person or persons shall at any time hereafter make any entry into any lands, tenements or hereditaments but within twenty years next after his or their right or title which shall hereafter first descend or accrue to the same; (2) And in default thereof, such persons so not

Entry into land, &c. shall be made within twenty years.

For entries to avoid a fine, see 4 Anne, c. 16. sect. 16.

(1) This limitation extends to the rights of the lord of a manor as to mines, lands, &c., within the manor; Rich *v.* Johnson, Str. 1142; Bull, N. P. 102, by the name of Lord Cullen *v.* Rich. So to the right of entry by a commoner, if the common has been inclosed twenty years; vi. Hawke *v.* Bacon, 2 Taunt. 160. As to the lord of a manor's right of entry for a forfeiture, see Doe d. Tarrant *v.* Hellier, 3 T. R. 172.

(2) But the right of entry may be pursued within twenty years after it attaches, although in the mean time the party may have had a different right, upon which more than twenty years' adverse enjoyment have attached. Thus, when a tenant in tail of lands in ancient demesne demised them, by fine, in the court of ancient demesne for three lives, and afterwards levied a fine of the reversion in the same court to the use of himself and his heirs; it being agreed, that the fines in that court did not bar the estate tail, it was held that the first fine created a discontinuance, and the second did not; and that although the issue in tail did not bring their formedon within twenty years after the death of their ancestor, they were not barred of their right of entry within twenty years from the determination of the lease for lives; Hunt *v.* Bourne, 1 Salk. 339, 2 Salk. 421. So where the devisor of an estate had made a lease for years, with clause of re-entry on payment of rent, and after his death the heir received the rent during the lease (being a period of more than twenty years) without any steps being taken by the devisee to recover the possession; it was held that the devisee was not barred, for that he could not have entered during the lease; and although a forfeiture was committed, he was not obliged to enter; Doe d. Cook *v.* Danvers, 7 E. 299. See also, as to the last point, 1 Ves. 278. The possession on which the statute attaches must also be adverse. A mortgagee is not barred by the possession of his mortgagor, paying interest; Lord Raym. 750; and see Keene d. Ld. Byron *v.* Dearden, 8 E. 248; Roe d. Pellat *v.* Ferrars, 2 B. and P. 542. The possession of one joint tenant, tenant in common, or parcener, as such, does not bar the right of entry of the other; but if the right of the other is denied, and the enjoyment is adverse, the statute attaches, such adverse possession being in effect an actual ouster; see Ford *v.* Grey, 1 Salk. 285; Reading *v.* Royston, 2 Salk. 422; Fairclaim *v.* Shackleton, 3 Bur. 2604; Doe *v.* Prosser, Cowp. 217; Peaceable *v.* Read, 1 E. 568. In that case Lord Kenyon said—"*Prima facie*, the possession of one tenant in common is that of another; and every case and datum in the books is to that effect. But you may shew that one of them has been in possession, and has received the rents and profits to his own use, without account to the other; and that the other has acquiesced in this for such a length of time as may induce a jury to presume an actual ouster of his companion: and there the line of presumption ends."—Ecclesiastical persons or corporations are not generally barred by the statutes; Magdalen College case, 11 Rep. 786; 1 Roll. Rep. 151. Where an ecclesiastical person neglects to bring his action within the time required, he himself will be barred, but not his successor; Plowd. 358. See stat. 4 Henry VII. c. 24, ante, Part II. Class X. No. 7, and notes, as to persons barred by fine and non-claim.

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entering, and their heirs, shall be utterly excluded and disabled from such entry after to be made; any former law or statute to the contrary notwithstanding.

Infants, femes covert, &c. excepted.

II. Provided nevertheless, that if any person or persons, that is or shall be entitled to such writ or writs, or that hath or shall have such right or title of entry, be or shall be at the time of the said right or title first descended, accrued, come or fallen, within the age of one and twenty years *feme covert*, *non compos mentis*, imprisoned or beyond the seas, that then such person and persons, and his and their heir and heirs, shall or may, notwithstanding the said twenty years be expired, bring his action, or make his entry, as he might have done before this Act; so as such person and persons, or his or their heir and heirs, shall within ten years next after his and their full age, discoverture, coming of sound mind, enlargement out of prison, or coming into this realm, or death, (1) take benefit of and sue forth the same, and at no time after the said ten years. (2)

The limitation of certain personal actions.

III. And be it further enacted, that all actions of trespass *Quare clausum fregit*, all actions of trespass, detinue, action sur trover, and replevin for taking away of goods and cattle, all actions of account and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, (3) their factors or servants, all actions of debt grounded upon any lending or contract without specialty, (4) all actions of debt for arrearages of rent, (5) and all actions of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought at any time after the end of this present session of Parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after, (6)

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(1) The word *death* must mean and refer to the death of the person to whom the right first accrued, and whose heir the claimant is; and the statute meant that the heir of every person, to which person a right of entry had accrued, during any of the disabilities should have ten years from the death of his ancestor, to whom the right first accrued after his disability, and who died under such disability (notwithstanding the 20 years from the first accruing of the title to the ancestor should have before expired). Per Lord Ellenborough, Doe d. George *v.* Jesson, 6 E. 80—in this case it was ruled, that the ancestor having died seised, leaving a son and a daughter, infants, and the son having died abroad, within age, the daughter was not entitled to 20 years to make her entry, after the death of her brother, but only to 10 years; more than 20 years having in the whole elapsed since the death of the father.

(2) Where the statute has once begun to attach, it continues to run, notwithstanding any subsequent disability; Doe dem. Duroure *v.* Jones, 4 T. R. 300. The ten years do not run at all while there is a continuance of the disabilities; but they run without intermission from the time that the disabilities first cease; Cotterell *v.* Dalton, 4 Taunt. 826. In this case it was ruled, that the right having commenced against the elder brother, tenant in tail, continued to run against the younger.

(3) It is decided in several cases cited Williams's (n) 2 Saund. 127, that the statute only extends to accounts current, and not to accounts stated. In Cotes *v.* Harris, B.N. 149, Denison, J. held, that the clause extended only to cases where there were mutual and reciprocal demands between two persons. In Cranch *v.* Kirkman, N. P. Peake 121, Lord Kenyon over-ruled the objection that the exception extends only to accounts between merchants; but qu. as to the correctness of that opinion; vi. Sheerman *v.* Withers, Ch. Cas. 152; Farrington *v.* Lee, 1 Mod. 270. In Catling *v.* Skoulding, 6 T. R. 189, Lord Kenyon said, that where the case is brought within the exception of the statute, the plaintiff is not barred, though there have not been any transaction between the parties for more than six years. But this was controverted in Duff *v.* The East India Company, 15 Vesey, 198; and in Barber *v.* Barber, 18 Ves. 286, it was expressly decided, that a demand between merchants was barred by the statute, all accounts having ceased six years. See the observations of Lord Hardwicke, in Welford *v.* Liddle, 2 Vesey, 400. It was formerly held, that the exemption only extended to actions of account; but the law is now settled to be, that it extends to actions on the case.—See the cases previous to that of Duff *v.* The E. I. Comp., more fully stated; Williams's notes to 2 Saund. 127.

(4) The Act does not extend to debt for not setting out tithes; Cro. Car. 513: nor to debt for an escape, founded on 1 Ric. II. c. 12; 1 Saund. 38; 1 Lev. 191; 1 Sid. 306: nor to debt on award; semble, 1 Lev. 273; 1 Sid. 415; 2 Saund. 63: nor debt for a copyhold fine; 1 Lev. 273: nor an action against a sheriff for money levied upon a *fi. fa.*; 3 Mod. 312.

(5) Rent reserved by indenture is not within the act; Hutton, 109.

(6) The statute may be taken advantage of

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(that is to say) the said actions upon the case (other than for slander) and the said actions for account, and the said actions for trespass, debt, detinue and replevin for goods or cattle, and the said action of trespass *quare clausum fregit*, within three years next after the end of this present session of Parliament, or within six years next after the cause of such actions or suit, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment, or any of them, within one year next after the end of this present session of Parliament, or within four (1) years next after the cause of such actions or suit, and not after; and the said actions upon the case for words, (2) within one year after the end of this present session of Parliament, or within two years next after the words spoken, and not after.

Their limitation after judgment or outlawry reversed.

IV. And nevertheless be it enacted, That if in any the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, or if any the said actions shall be brought by original, and the defendant therein be outlawed, and shall after reverse the outlawry; that in all such cases the party plaintiff, his heirs, executors (3) or administrators, as the case shall require, may commence a new action or suit from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not after.

After judgment or nonsuit in a *quare clausum fregit*, the plaintiff is barred to renew the suit.

V. And be it further enacted, That in all actions of trespass (4) *quare clausum fregit*, hereafter to be brought, wherein the defendant or defendants shall disclaim in his or their plea, to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought, whereupon or

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in actions upon debt, upon *nil debet;* but in assumpsit, and other actions enumerated in this section, it is necessary to plead it, although the cause of action upon the face of the declaration may appear to have been beyond the time of limitation. In all cases of assumpsit, the plea may be, that the action did not accrue within six years; but where the cause of action arises not upon the promise, but upon some collateral event, it is not sufficient to plead non assumpsit. In assumpsit by an executor or administrator, upon promises to the deceased, if the plaintiff replies a promise within six years, he cannot give in evidence a promise to himself; Deane *v.* Crane, Salk. 28; Sarrell *v.* Wine, 3 East, 409. It is therefore proper, in all cases of doubt, to have two sets of counts, one upon promises to the deceased, the other to the plaintiff. The limitation attaches with reference to the actual commencement of the action, and not according to the supposition of the record, or the teste of the writ. See the cases upon pleadings, with reference to the statute, Williams's n. 2 Saund. 63; and Gray *v.* Pinder, 2 B. and P. 427.; Harrington *v.* Taylor, 15 E. 378; Leaper *v.* Tatton, 16 E. 420. If an action is commenced in time in an inferior court, and removed by the defendant into the King's Bench, after the time of limitation, whereupon the plaintiff declares *de novo*, the suit is not barred; Matthew *v.* Phillips, 2 Salk. 424. —As to acknowledgments by which a case is taken out of the statute, see note at the end of the class, [6] [7] [8].

(1) Where the defendant, in assault, pleaded not guilty within six years, it was ruled on demurrer that the plea was bad . an immaterial issue. But in Macfadzen *v.* Olivant, 6 East, 387, in which the question arose whether *crim con.* was case or a trespass, and if trespass, whether the limitation was not four years; it was held, that, supposing it to be trespass, the objection must be taken by special demurrer, as four years were included in six; and a plea of not guilty within six years, includes the allegation of not guilty in four. In Cooke *v.* Sayer, 2 Bur. 753, a plea of not guilty within six years in such case appears to have been held good; but it is only mentioned incidentally, upon a question of costs, and it does not appear on the report whether the discussion related to the action being within the statute in general, or upon the distinction between six years and four.

(2) Where the words are actionable without special damage, the statute is a bar. Secus, where special damage is the ground of the action; Saunders *v.* Edwards, 1 Sid. 95. Raym. 61. The limitation does not extend to slander of title; Law *v.* Harwood, Cro. Car. 141; and vi. note (1) infra, p. 232.

(3) As to commencement of actions by executors, see general note at the end of the title, [4].

(4) This does not apply to trespass for taking goods; Bailee *v.* Vivash, 1 Str. 549.

No. IV. 21 James I. c. 16.

upon some of them the plaintiff or plaintiffs shall be enforced to join issue; and if the said issue be found for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suits concerning the same.

In actions of slander under 40*s.* the plaintiff shall recover no greater costs than damages.

VI. And be it further enacted by the authority aforesaid, That in all actions upon the case for slanderous words, to be sued or prosecuted by any person or persons in any the courts of record at *Westminster*, or in any courts whatsoever that hath power to hold plea of the same, after the end of this present session of Parliament, if the jury upon the trial of the issue in such action, or the jury that shall enquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages (1) so given or assessed amount unto, without any further increase of the same; any law, statute, custom or usage to the contrary in any wise notwithstanding.

Infants, femes covert, &c. excepted.

VII. Provided nevertheless, and be it further enacted, That if any person or persons that is or shall be intituled to any such action of trespass, detinue, action sur trover, replevin, actions of accounts, actions of debts, actions of trespass for assault, menace, battery, wounding or imprisonment, actions upon the case for words, be or shall be at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned or beyond the seas; that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, discovert, of sane memory, at large, and returned from beyond the seas, as other persons having no such impediment should have done. 20 H. 3. c. 8. 3 E. 1. c. 39. 32 H. 8. c. 2. 1 M. Sess. 2. c. 5.

## [ No. V. ] 10 and 11 William III. c. 14.—An Act for limiting certain Times, within which Writs of Error shall be brought for the reversing Fines, Common Recoveries and Ancient Judgments.

[See post, Title *Error*.]

## [ No. VI. ] 4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

[Inserted at length Pt. II. Cl. I. No. 23.]

4 Anne, c. 16. Seaman's wages.

XVII. AND be it further enacted by the authority aforesaid, That all suits and actions in the Court of Admiralty for seamen's wages, which shall become due after the said first day of *Trinity* Term, shall be commenced and sued within six years next after the cause of such suits or actions shall accrue, and not after.

(1) The provision does not extend to libels; Salk. 207; nor to words not actionable in themselves, and where the action is only maintainable on account of special damage; Brown *v.* Gibbons, Salk. 206; Bass *v.* Hickford, Anders. 375: nor when, though the words are actionable, there is a substantial injury, which, independently of the words, would be a ground of action; as that the plaintiff, by occasion of the words, through the procurement of the defendant, was imprisoned; Carter *v.* Fish, 1 Str. 645. But where the words are themselves actionable, special damage does not take the case out of the statute; Bury *v.* Perry, 2 Ld. Raym. 1588; Turner *v.* Horton, Barnes 132; Willes 438; Surman *v.* Shelleto, 3 Bur. 1688; Collier *v.* Gaillard, 2 Bl. 1062. On a general verdict for the plaintiff, where some counts are for words actionable in themselves, and others only on account of special damage, full costs are given; Saville *v.* Jardine, 2 H. B. 531. So where the action is removed by the defendant from an inferior court; Littlewood *v.* Smith, 1 Lord Raym. 181. The statute applies to judgments by default; and a judgment for 1*s.* damages and 13*l.* costs was reversed in toto; Lamper *v.* Hatch, 2 Str. 934; to cases where there is a plea of justification; Halford *v.* Smith, 4 E. 567.

No. VI. 4 Anne, c. 16.

XVIII. Provided nevertheless, and be it further enacted, That if any person or persons, who is or shall be entitled to any such suit or action for seamen's wages, be or shall be, at the time of any such cause of suit or action accrued, fallen or come, within the age of twenty-one years, feme covert, *non compos mentis*, imprisoned or beyond the seas, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within six years next after their coming to or being of full age, discovert, of sane memory, at large, and returned from beyond the seas.

Proviso in case of *nonage, feme covert*, or *non compos mentis*, &c.

XIX. And be it further enacted by the authority aforesaid, That if any person or persons against whom there is or shall be any such cause of suit or action for seamen's wages, or against whom there shall be any cause of action of trespass, detinue, actions sur trover, or replevin for taking away goods or cattle, or of action of account, or upon the case, or of debt grounded upon any lending or contract without specialty, of debt for arrearages of rent, or assault, menace, battery, wounding and imprisonment, or any of them, be or shall be, at the time of any such cause of suit or action given or accrued, fallen or come, beyond the seas; that then such person or persons, who is or shall be entitled to any such suit or action, shall be at liberty to bring the said actions against such person and persons, after their return from beyond the seas, so as they take the same after their return from beyond the seas, within such times as are respectively limited for the bringing of the said actions before by this Act, and by the said other Act made in the one and twentieth year of the reign of King *James* the first.

Action against persons gone beyond the seas, may be brought after their return.

Proviso.

21 Jac. 1. c. 16.

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## [ No. VII. ] 9 Geo. III. c. 16.—An Act to amend and render more effectual an Act made in the twenty-first Year of the Reign of King *James* the First, intituled, "An Act for the general Quiet of the Subjects against all Pretences of Concealment whatsoever."

[Inserted Pt. II. Cl. XII. No. 30.]

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THE FOLLOWING GENERAL VIEW OF THE

## STATUTES OF LIMITATIONS, AND PRESUMPTIONS FOUNDED UPON LENGTH OF TIME,

Was originally published in the Appendix to the Translation of Pothier. The Additions are, as in other instances, distinguished by brackets; and the additional notes are further distinguished from the original ones by the references being in Figures.

[1] "In stating the English law respecting limitations, and presumptions founded upon length of time, I shall 1st advert to the provision respecting ordinary debts; 2d, (deviating from my usual plan, which does not embrace the law of real estates) to the case of ejectments; and, 3d, to those cases in which, without any legislative provision, the courts of justice have adopted rules, analogous to those constituted by statute; without dwelling upon actions for injuries, or provisions of a special and particular nature.

"By statute 21 Jac. 1. Ch. 16. § 3. all actions of account, and upon the case, other than such accounts as concern the trade of merchandize, between merchant and merchant, their factors or servants, all actions of debt grounded on any lending, or contract without specialty, and all actions of debt for arrearages of rent, shall be commenced within six years after the cause of action.

"By the same section, actions of trespass, *detinue* and *replevin*, must be commenced within six years; actions of assault, battery, wounding, and imprisonment, within four years; and actions of slander within two years.

"By § 4. if judgment is given for the plaintiff, and afterwards reversed by a writ of error, or arrested; or if the defendant is outlawed, and the outlawry reversed, a new action may, from time to time, be commenced within a year afterwards.

"And by § 7. if any person entitled to any such cause of trespass, *detinue*, action for trover, replevin, actions of accounts, actions of debts, actions of trespass for assault, menace, battery, wounding, or imprisonment, actions upon the case for words, at the time of the cause of action, accruing, shall be under the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond seas, such persons shall be at liberty to bring the actions

within the time before limited, after being of full age, discovert, of sane memory, at large, and returned from beyond seas, as other persons not having the same impediments should have done.

"And by 4 and 5 Ann. c. 16. where any persons, against whom there is cause of action, shall be beyond sea at the time of such cause of action accruing, the persons who shall have such cause of action, shall have liberty to bring an action within such times as are limited by the Statute of James, after their return.

[2] "I. The principles stated by Pothier, that prescription cannot begin to run, but from the time when the creditor might institute his demand, is included in the very terms of the statute, so that if credit is given, or if a debt is contracted upon condition, it is manifest that no cause of action can arise until the credit is expired, or the condition performed, and consequently that before those periods the time of limitation cannot commence. When the defendant received money belonging to an intestate's estate, it was held that the limitation only commenced from the time of administration being granted; for until that time there was no person entitled to receive the money; Carey *v.* Stephenson, 2 Salk. 421; see Wittershiem *v.* The Countess of Carlisle, 1 H. Bl. 601.

"I am not aware of any case in which the subject of a contract, including several distinct times of payment, has fallen under consideration. To such a case the terms of the statute may be literally applied, so as to run for each portion from the respective times of payment; and I see no ground upon which the operation of it can be prevented, though, under these circumstances, the courts would in all probability be peculiarly disposed to favour every implication of an acknowledgment, extended to the time appointed for the latest payment.

"Where there are mutual accounts between the parties, an acknowledgment will be implied at the time of the last transaction: this will be more particularly mentioned presently. But the particular exception in the statute of accounts, between merchant and merchant, seems to have a more extensive effect; for it has been held that to such cases the statute does not at all attach, and therefore where the cause of action is brought within that exception, no length of time can be alleged as a bar to the demand; Catling *v.* Skoulding, 6 T. R. 191. (*a*) [But this doctrine has been since over-ruled, *see notes in the statute.*] This exception is clearly confined to the case of mutual accounts and reciprocal demands between two persons in trade, and does not extend to cases between a tradesman and his customers, for these are not merchant's accounts; Bul. N. P. 149.

"The continuance of a mutual account of debts and credits is held sufficient evidence of an acknowledgment: for, where an action was brought for several years' rent, and the tenant had supplied his landlord with shop-goods during the latter period of the tenancy, it was held that the statute did not apply. Lord Kenyon said, "Here are mutual items of account, and I take it to be clearly settled, as long as I have any memory, that every new item and credit in account, given by one party to the other, is an admission of there being some unsettled account between them, the amount of which is afterwards to be ascertained; and any act which the jury may consider as an acknowledgment of its being an open account, is sufficient to take the case out of the statute." Where all the articles are on one side, it seems, according to a case cited by his Lordship, and decided by Mr. Justice Dennison, that the last item, which happens to be within six years, shall not draw after it those that are of longer standing; Catling *v.* Skoulding, ub. sup.

[3] "In the exceptive clause of persons under certain protections, most of the causes of action before enumerated are repeated; but the clause does not mention actions on the case generally, but only actions on the case for words. It has however been decided to have a general application, and to include the common action upon promises, for recovery of debts; actions of debt are included in the enumeration; and though there is a casual omission of expression in the excepting clause, it is impossible to suppose that this exception was intended to apply only partially in respect of the objects mentioned in the general purview; Vide Rochtschilt *v.* Leibman, 2 Str. 836.

"Upon the effect of the exception as to persons beyond seas, it has been observed by the Court of Common Pleas, that if the plaintiff is a foreigner, and doth not come to England in fifty years, he has still six years after his coming to England to bring his action; and if he never comes to England himself, he has always a right of action whilst he lives abroad, and so have his executors or administrators after his death. An infant may sue before he comes of age, if he pleases; but if he does not, he has six years after he comes of age to bring his action. While any of the disabilities mentioned in the Statute of Limitations continue, the party may, but is not obliged, to bring his action; Stathorst *v.* Graeme, 3 Wils. 145. It has been also decided, that if some of the persons, having a joint cause of action, are in the kingdom, and others beyond seas, the statute attaches as if they had all been in the kingdom; Perry *v.* Jackson, 4 T. R. 516. The term *beyond seas*, is strictly construed, and the exception is not allowed to extend to a person in Scotland; King *v.* Walker, 1 Bl. Rep. 286.

[4] "In case six years have not elapsed at the time of the creditor's death, the executor is allowed to commence an action after the expiration of six years, provided he does so within one year after the death of his testator. This is said to be by the equity of the clause, which gives

(*a*) Vide several cases cited, Williams's notes to p. 2, Saund. 127.

a year to commence a new action, in case the first judgment has been arrested or reversed; Bul. N. P. 150; Wilcock *v.* Huggins, 2 Str. 907. However reasonable it may be to allow such an exception, it is not very obvious how any inference to that effect can be drawn from the clause to which it is referred. (1)

[5] "It is a rule fully established, that when the time required by any statute of limitations has begun to run, it shall continue, notwithstanding the party entitled afterwards falls under any of the protections, or, as they are usually called, disabilities: for instance, if a woman marries the day she comes of age, or a person is thrown into prison the day after his arrival in the kingdom, the time will run without interruption, from the time of coming of age, or of the arrival. If it has commenced against the ancestor, it will continue against his infant heirs. A distinction was lately endeavoured to be taken between a voluntary disability, such as marriage, and one which was involuntary, such as imprisonment; but this was not allowed; Doe *v.* Jones, 4 T. R. 300; Smith *v.* Hill, 1 Wils. 134. (2)

[6] "According to the modern determinations of English courts, the admission of a debt has a more extensive effect than that which is stated by Pothier; for it is now an established rule, the application of which is of daily experience, that the slightest acknowledgment of the obligation not having been discharged, is sufficient not only to interrupt the operation of the statute, but to revive from that time the right of action, which was extinct.

"Cases have occurred, in which a person, by mentioning in conversation that he had contracted a debt, but should not pay it, as it was of above six years' standing, or by declaring at the time of his being served with process, that he should on that account resist the payment, has deprived himself of that right, upon which it was his intention to insist.

"What acts or declarations constitute an acknowledgment, is a question of fact; it was therefore ruled, that a judge ought to have submitted the effect of a letter, couched in terms of ambiguity and evasion, to the decision of a jury, instead of deciding upon the insufficiency of it, of his own authority; Lloyd *v.* Maund, 2 T. R. 760.

"A distinction prevails between such an Act as shall prevent the operation of the Statute of Limitations, and such as shall repel the defence of an obligation being contracted during minority. In the first case, a mere admission that the debt remains undischarged is sufficient; in the second, there must be an actual promise. And the distinction is not without foundation; for, in the first case, the obligation is founded upon the fact, the length of time operates as a defeazance, and the admission furnishes evidence, that the presumption, which was the cause of providing a bar, is contrary to the fact. In the other case, there is no legal obligation in the first instance; there is only a moral obligation, which may be a sufficient consideration to support an actual promise. The mere acknowledgment of such moral obligation can have no legal effect; an actual intention to assume a personal responsibility is the only foundation of a legal demand, and that intention must be manifested by acts or declarations inconsistent with the contrary disposition.

[7] "The effect of the statute is confined to a right of action, it is not to collateral purposes regarded as an extinction of the debt; therefore, if a person by will directs his debts to be paid, those which were barred by the statute are held to be included. [This doctrine is taken for granted in many cases, and was generally supposed to be the established rule of Courts of Equity; but in Burke *v.* Jones, 2 V. and B. 275, the Vice-Chancellor, upon a full review of the authorities, decided the contrary; and said, that there was no decision that a devise for the payment of debts had the effect of reviving debts barred by the statute at the death of the devisor.]

"Neither is a creditor, whose debt is barred by the statute, precluded from taking out a commission of bankrupt, at least, unless the objection is taken by the bankrupt himself; Quantock *v.* England, 5 Bur.: and even in that case, I have known the argument, in support of the opposite proposition, disallowed. (*a*) And it is clearly no objection to the proof of a debt, under a commission, that it was contracted above six years before the commission issued. [This was generally understood to be the law at the time when the present discussion was published; but the contrary has been since ruled in the cases, *ex parte* Dewdney, 15 Ves. 479; and the dividends paid on such proof were ordered to be refunded; S. C. 2 Rose, B. L. 59, *n.*—See the discussion on this subject, 1 Christ. B. L. 221.]

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[(1) See the discussion on this subject in Mr. Selwyn's Note, in his abridgment of the law of *Nisi Prius*, p. 133, 3d Edition. From the cases which he cites, he seems to intimate, that the only rule which can be laid down with safety is, that the executor must bring his action within a reasonable time. But upon examining the cases cited themselves, I do not find it clearly ascertained, that in any instance an action has been allowed to be commenced in the first instance, by an executor or administrator, after the proper time of limitation has expired; and if not, all the cases in which that right has been recognized resolve themselves into mere dicta. In Kensey *v.* Heywood, 1 Lutw. 256, the action was commenced by the deceased within the six years, and abated by his death; and a new original was taken out by the executor within the following term, which was held to bring the case within the equity of the statute, as a continuance of the original action.]

[(2) And see Doe *v.* Jesson, 6 E. 80; Cotterell *v.* Dutton, 4 Taunt. 826; both cited in Notes to stat. 21 Jac. 1. c. 16.]

"(*a*) Upon applying for the rule to shew cause why there should not be a new trial in the case of Glaister *v.* Hewes, reported on another point, 7 T. R. 498."

[8] " A partial payment by one of the drawers of a joint and several promissory note, was held to be a sufficient acknowledgment to prevent the operation of the statute in favour of the others; Whitcomb *v.* Whiting, Doug. 652. And I conceive it may be stated generally, that an acknowledgment, in whatever manner, by one of several joint debtors, shall be obligatory upon all, and that the distinction between such acknowledgment being made within, or after the period of limitation, would not be allowed.

" It has been decided, that where one joint debtor became a bankrupt, the payment of a dividend by his assignees should operate as an acknowledgment to effect the other. Jackson *v.* Fairbank, 2 H. Bl. 340. This was certainly carrying the matter to the furthest possible extent; for the right to prove upon the estate was not affected by the Statute of Limitations, and could not have been resisted by the assignees.

" By the several decisions which have taken place, the effect of the Statute of Limitations seems to be almost reduced to a mere matter of presumptive evidence. (1) However conformable such a course of proceeding may be to original principles, which render it expedient to fix a limitation of time, it might be justly questioned, whether any thing less than an acknowledgment, intended to import the subsistence of a valid obligation, should be allowed to satisfy the true construction of the statute. (*a*)

" It may not be improper here to hint, that considerable caution should be applied to the evidence of persons brought to prove a mere verbal acknowledgment. Those persons are often selected to apply to the party charged as debtor, on account of their cunning in catching at any ambiguous expression, and in representing the case most favourably for those by whom they are employed. To this it may be added, that such evidence is seldom exposed to the temporal risks which attend the commission of perjury. (*b*)

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[(1) In Leaper *v.* Tatton, 16 E. 420, Lord Ellenborough says—"The limitation of the statute is only presumptive payment. If the defendant's own acknowledgment that he has not paid be shewn, it does away the statute." See also a point of pleading in that case.]

" (*a*) It is several years since these observations have been committed to writing. By a very recent decision it was established, that saying, " I do not consider myself as owing Mr. B. a farthing, it being more than six years since I contracted: I had the goods and paid part, and 26*l.* remains due," was an acknowledgment which took the debt out of the statute. The court said, that whatever their opinion upon the statute might have been, had the question been new, yet after the long train of decisions upon the subject, it was necessary to abide by the construction which had been put upon it; in conformity with which they thought themselves bound to hold that what was said by the defendant was sufficient acknowledgment of the pre-existing debt, to create an assumpsit, so as to take the case out of the statute; Bryan *v.* Horseman, 4 East, 599. This decision was certainly in conformity with the series of precedents upon the subject; but as to the general precedent of adhering to the mere authority of former cases, in opposition to the positive terms of an Act of Parliament or an established maxim of law, of placing a secondary above a primary authority, much doubt may fairly, and without disrespect, be entertained. Where the return to the ancient principle would be attended with material detriment, as by disturbing titles to real estates, held under the sanction of rules, which, however erroneous in themselves, have been established by a series of precedents, the reason for an adherence to the precedents evidently preponderates; but where there will be no inconvenience beyond the immediate case, where the general consequences will be wholly prospective, I cannot but adhere to the opinion, (which I have perhaps expressed with obtrusive repetition) that the courts of justice have as much authority now to restore the law, as they have had before to subvert it: and that a correct principle of law is an authority entitled to higher respect than an erroneous set of precedents. Considering the law, however, on the particular subject, as now beyond the reach of argument, and aware how much my own opinion upon the effect of precedent is different from that which usually prevails in practice, I think it not irrelevant to suggest to persons whose claims are barred by the statute, and who wish to obtain an acknowledgment of the subsistence of the debt, the utility of filing a bill of discovery, obliging the defendant to state whether the debt was contracted, and whether it has been paid. If the subsistence of the debt is admitted, (and without perjury it cannot be denied) it will not, if there is any consistency of decision, be of any avail to add a claim to the protection of the statute." [See as to pleading the statute in such case, *post*, [22]. In Cobham *v.* Marsh, 3 Taunt. 380, it was ruled that saying, " I owe you not a farthing, for it is more than six years since," could not be left to the jury as an acknowledgment; and see Birchall *v.* Keppel, 1 New Rep. 20. In the subsequent case of Leaper *v.* Tatton, referred to in note to [8], *ante*, the defendant saying " that he had been liable, but was not liable then, because the bill was out of date," was ruled to be an acknowledgment, taking the case out of the statute.—It seems quite impossible to reconcile these cases. See Baillie *v.* Sibbald, 15 Ves. 185.]

" (*b*) Mr. Serjeant Williams observes to the same effect, that it might perhaps have been as well if the letter of the statute had been strictly adhered to; it is an extremely beneficial law, on which, as has been observed, 2 Salk. 421, Green *v.* Revitt, the security of all men depends, and is therefore to be favoured; and although it will now and then prevent a man from recovering an honest debt, yet it is his own fault that he postponed his action so long;

[9] "It has been argued, that where a party has been induced by fraud, to pay money, the Statute of Limitations does not run, or at least only runs from the time when the fraud is discovered; but the allegations in the particular case were deemed not sufficient to raise the question; Bree *v.* Holbeach, Doug. 655. I can, however, hardly think that the argument is tenable. Courts of equity have, in the exercise of that discretionary power which they are allowed to possess, adopted an analogy to the Statute of Limitations, with an exception in cases of fraud; and it seems from thence to be inferred, that the courts of law must adopt, in the construction of the statute, an exception analogous to that of the courts of equity. But the exposition of a statute is imperative, and not discretionary; and to qualify the express provisions of an Act, by exceptions deduced from its supposed spirit, however conducive to the justice of particular cases, is a most alarming precedent. Besides, the ground of introducing a period of limitations is the lapse of memory, and the loss of evidence. A transaction, which, when explained, is perfectly fair, may be attended with circumstances of a fraudulent aspect, and it would be unjust to let those circumstances induce a claim, where the evidence capable of affording an explanation is lost. The qualification deduced from the time of discovering the fraud, would be attended with continual uncertainty; for circumstances may appear to give a man the first discovery of a fact with which he has been long acquainted, but the knowledge of which rests in his own mind.

[10] "There is another rule in courts of equity which may deserve a different consideration as applied to legal demands, *viz.* that length of time is no bar in the case of a *trust*. Where a man deposits money in the hands of another, to be kept for his use, the possession of the custodee ought to be deemed the possession of the owner until an application and refusal, or other denial of the right; for, until then there is nothing adverse, and I conceive that upon principle no action should be allowed in these cases, without a previous demand; consequently, that no limitation should be computed further back than such demand. And I think it probable, that under these circumstances, the limitation would not be allowed to attach, though the other part of the observation would be as probably disallowed; for a sweeping rule has been by some means introduced into practice, that an action is a demand; whereas every action in its nature supposes a preceding default: where money is improperly received, or goods are bought without any specific credit, or even where money is borrowed generally, there is held to be an immediate duty, and it is a perfectly legitimate conclusion, that no demand can be necessary, in addition to the duty itself. But wherever there is a loan, in the nature of a deposit, or any other confidential duty is contracted, the mere creation of that duty, unaccompanied with the absolute breach of it, by denial, or inconsistent conduct, ought not to be considered as a ground of action.

[11] "The commencement of an action within the six years of course prevents the Statute of Limitations having effect. There are many cases upon the subject, the result of which is, that the actual day of commencing the action is the time to be considered, without regard to those fictitious relations, which, for general purposes, are deemed the commencement of the suit, and that the suit so commenced must be that which is effectively proceeded in.

[12] "II. By the same statute of 21 Jac. I. c. 16, no person shall make entry into any lands, but within twenty years after his right shall first descend or accrue; but in case the persons entitled shall be at the time of such right first descended, or accrued, within the age of twenty-one years, *feme covert*, *non compos mentis*, or beyond the seas, such persons, or their heirs, may make an entry as before the Act, so as they take the benefit of the Act within ten years after the disability removed. The right of entry is essential to the maintenance of an action of ejectment, which is now the almost invariable course of proceeding for the recovery of lands.

"Writs of right may be sued out within sixty years, which is the longest period of limitation allowed by law, with the like exceptions as to infants, &c.

[The present limitation of sixty years has a considerable effect in raising difficulties to titles, while it has very little effect in the actual preservation of rights, as it is scarcely once in a year that any real action is brought, and when brought is so little countenanced that every difficulty and embarrassment is thrown in the way of it: and in this, as in all other cases, it would seem manifestly inconsistent to admit the existence of a law as beneficial, while the application of it is uniformly discountenanced as injurious. The usual exceptions are also rather difficulties in the way of the title than matters of any real practical utility; and on the general scale of public advantage, the balance seems evidently to be in favour rather of letting a complete title be acquired by a peaceable possession of twenty years, than of letting a person come from beyond sea to disturb such title at any indefinite distance of time. So with respect to coverture: the husband has so great an interest in the acquisition of the property of his wife, that it is very rarely indeed that any action is brought in which advantage is taken of the exception; and the instances of persons being imprisoned for a length of time, which would affect the principle of limitation are so very few, that any particular advantage which could arise from the preservation of their rights would be much inferior, with reference to the general scale of public utility, to the common advantage of rendering titles secure after the proposed period of limitation. The term *Disabilities*, which is used as denoting the several cases of persons who are

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besides which, the permitting of evidence of promises and acknowledgments within the six years, seems to be a dangerous inlet to perjury."

excepted from the Statutes of Limitations, is in some degree calculated to mislead, as there is no disability in point of law; and inability with respect to expense is not of itself a protection from the general operation of the statutes. The exception of the rights of infants is of a more favourable nature, and has the advantage of being confined to a definite period; but even this case appears to be sufficiently protected by the regulation of the statute of 21 Jac. I.]

"In case of a fine with proclamations, all persons are barred after five years from the levying of the fine, except persons under disability and persons whose right shall accrue after proclamation, who must proceed within five years after the disability is removed, or the right accrues; 4 Ll. VII. c. 24. (1)

"By 9 Geo. III. c. 16, the King (who is not bound by general Acts of Parliament) is precluded from claiming any lands, &c. except within sixty years after the title accrued.

[13] "The effect of the Statute of Limitations in respect to ejectments, is different from that which is applied to it in case of debts, whereby, as we have seen, it is reduced to little more than a mere presumption; for a possession of twenty years gives an actual possessory title, which may be made the substantive ground of a claim, without being subject to any defeazance, by evidence of an anterior and adverse right; Taylor *v.* Atkins, 1 Bur. 119.

"So, a possession of sixty years or of five years, after levying a fine, is not only a bar to any judicial proceeding, but a complete and substantive title, subject to the several exceptions which are introduced in favour of persons under age, or having other protections and disabilities.

"In order to sustain an ejectment, there must therefore have been an actual possession, consistent with the title claimed, within twenty years; and acts which merely prove a property, but not a possession, are insufficient.

[14] "But the Statute of Limitations can only operate in case of an adverse possession; therefore, if one person has held the estate on the joint account of himself and another, or by the permission of the person really entitled, and without claiming any inconsistent right, the original title is not affected. Whether the possession of one person is adverse to, or consistent with the title of another, is, in every case, a question of fact, to be collected by a jury, from all the circumstances; see Doe *v.* Prosser, Cowp. 217; Page *v.* Selby, Bul. N. P. 102, and notes to 21 Jac. I.

"The observation that if the statute has once begun to operate, it continues to run, notwithstanding any subsequent disability, has already been mentioned, and this rule has been more frequently applied to the case of titles than of contracts.

[15] "We have seen that, according to the civil law, a prescription which began against the heir, continued against the substitute. In the law of England I take it to be clear, that the contrary is the case, and that no laches of the tenant for life, or in tail, can operate against those who are entitled in remainder, unless the adverse possession was paramount to that of the person from whom the several claims are derived. Such indeed is the literal construction of the Act, and the application of it in practice is perfectly familiar.

"But the laches of the tenant in tail falls upon his issue, claiming under the same limitation. [And by Cotterell *v.* Dutton, 4 Taunt. 426, the laches of the elder brother, upon whom the right first descends, bars the right of the younger.]

[16] "III. The utility of fixing a period of time, after which, rights that have not been asserted or acknowledged, shall be considered as extinct, has induced the courts of justice in many instances to follow the example of the legislature, and to adopt a limitation of time, which shall be conclusive, for the bar of a claim, or the protection of a possessory enjoyment. And the period adopted for this purpose is almost invariably twenty years.

"The present view of the subject does not extend to those cases in which the lapse of time is merely considered as a matter of circumstantial evidence; and as such, is either alone, or in conjunction with other circumstances, relied upon as material in respect of an individual case. The effect of it in this point of view may fairly vary according to the different impressions of those to whom the decision of questions of fact properly belongs, and is perfectly distinct from the application of a general rule of presumption.

[17] "The Statute of Limitations, as we have seen, only extends to actions of debt, founded upon any loan or contract, without specialty. This, of course, excludes bonds and all debts secured by deed; but it is now an established rule that after a lapse of twenty years, without payment of interest, or other acknowledgment, payment shall be presumed. And though this is only a circumstance for the jury to found a presumption upon, as it is a presumption universally applied, it is in a great measure attended with the same effect as an absolute bar. (2)

"A smaller period of time may, in conjunction with other circumstances, such as settling another account in the intermediate time, without taking notice of the particular demand, be

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[(1) See this statute with notes, Part II. Class X. No. 7.]

[(2) By the Irish Statute 8 Geo. I. c. 4. s. 2. debts due by single bill, bond, judgment, &c. are expressly barred at the end of twenty years, unless there has been payment of interest, or other satisfaction on account thereof, within that time; see 2 Gabbett, 224. Whether such a debt can be revived by a subsequent promise or acknowledgment, Q.; and see Maddock *v.* Bond, Ir. T. R. 332; Barrington *v.* O'Brian, 1 Bull. and B. 173.]

sufficient to induce a presumption in the particular case; but any consideration of that kind falls within the distinction above referred to; see Oswald *v.* Leigh, 1 T. R. 270.

"It is a general rule, that a person shall not be allowed to make evidence for himself; but it has been held that an indorsement of the payment of interest upon a bond, made ten years before the presumption attached, ought to be left to the jury to decide, whether it was made with the privity of the obligor; on the other hand, where the indorsement was made after the expiration of twenty years, the evidence was rejected as inadmissible, and the Chief Justice took the distinction (manifestly founded in reason and good sense,) that in the preceding case the indorsement was admitted because it appeared to have been made at a time when it could not have been thought necessary to encounter the presumption; Searle *v.* Lord Barrington, 2 Stra. 826; 2 Lord Raym. 1370; Tamer *v.* Crisp, 2 Stra. 827.

[18] "Our courts of equity have in most instances adopted the presumption of a demand having been satisfied or a right extinguished, after the lapse of twenty years, provided there are no intermediate acts by which that presumption is repelled. The most common application of this principle is, that after a person, to whom an estate has been conveyed by way of mortgage, has been twenty years in possession, without rendering any account, the equity of redemption shall be held to have been released or abandoned; but if there are any acts within the twenty years admitting the relative characters of mortgagor and mortgagee, (1) the presumption is destroyed, and the time can only be computed from the last act which is indicative of such an admission.

[19] "It is a maxim in equity that no length of time is a bar in cases of fraud: where the fraudulent act is clear and manifest, the application of this rule is perfectly proper and consistent with the discretionary powers of a court of equity; but where the fraud is to be inferred from a complication of facts, and the delay in adducing the charge is not satisfactorily accounted for, it may be right to reflect upon the principles, on account of which any limitation is introduced, and which principally regard the difficulty of accounting for the particulars of transactions obliterated from the memory, and of which the witnesses may be dead or dispersed. This topic occurred in the case of Deloraine *v.* Brown, 3 Bro. Cha. 633, which was decided upon a collateral point; but the Master of the Rolls, in a subsequent case said, he referred to the arguments of counsel to shew that, even in a case of gross fraud, the court does not do justice by decreeing an account, after a considerable length of time, against executors, legatees, and innocent persons claiming under the fraudulent party; see 2 Ves. jun. 92, Hercy *v.* Dinwoody. (2)

[20] "It is also held, that no length of time shall operate as a bar in cases of trust; but this rule can only be applied between the trustee and the party interested in the execution of the trust, and cannot be opposed to the right of a third person claiming in opposition to both; (3) and even as between the immediate parties, where the trust relates to some act of an evanescent nature, such as the payment of a sum of money, and not to any permanent interest, the length of time may be fairly regarded as evidence of performance.

[21] "The following recent cases will shew, in a clear point of view, the regard paid by a court of equity to length of time in general, with the disregard of that circumstance, where the inconvenience which might otherwise arise was fully obviated.

"A suit was instituted for a legacy, which was resisted on the ground of presumed payment, arising from the length of time (being above forty years) which had elapsed without any demand, and because all the persons who could throw light upon the question were dead, and the claim was disallowed. Lord Commissioner Eyre observed, that it is a presumption of fact, in legal proceedings, before juries, that claims, the most solemnly established upon the face of them, will be presumed to be satisfied after a certain length of time. Courts of equity would do very ill by not adopting that rule. So essential is it to general justice, that though the presumption has often happened to be against the truth of the fact, yet it is better, for the ends of general justice, that the presumption should be made and favoured, and not be easily rebutted, than to let in slight evidence of demands of this nature, from which infinite mischief and injustice might arise. If he could indulge conjecture, he doubted about the payment of the legacy; he knew that in Wales there is a pious reverence for the representatives of the family, and that the other relations are unwilling to press them, and will take these demands upon them by a little at a time; but the interests of general justice require that demands should not be afterwards enforced in this way; and Lord Commissioner Ashhurst said, that all statutes of limitations and prescriptions, analogous to them, are to be favoured; Jones *v.* Tuberville, 2 Ves. Jun. 11.

"In the case of Pickering *v.* Lord Stamford, 2 Ves. jun. 272, 581, a suit was instituted by persons claiming as next of kin of Thomas Walton, who died above thirty years before; having directed by his will that his personal estate should be applied to such charitable purposes as his

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[(1) See upon this subject Hodle *v.* Healey, 1 V. and B. 539; Whiting *v.* White, Coop. 1.; Reeks *v.* Postlethwaite, Coop. 161.; Perry *v.* Marston, n. ibid.; Barron *v.* Marten, Coop. 189.]

[(2) And see Smith *v.* Day, 3 Bro. Cha. 630; Hovenden *v.* Lord Annesley, 2 S. and L. 630; Bond *v.* Hopkins, 1 S. and L. 428; Medlicot *v.* O'Donel, 1 Ball and Beatty, 156; and the cases mentioned in the next note.]

[(3) That the rule does not extend to trusts by implication, but only to actual trusts, see Beckford *v.* Wade, 17 Vesey, and cases there cited.]

executors should direct. The executors established a school; and the object of the suit was to recover so much of the personalty, vested in the mortgagees, as had not been applied (all dispositions by will of money secured by mortgage to charitable uses being void, by the statute of Mortmain). The Master of the Rolls, Sir R. P. Arden, upon the first hearing of the case, directed an inquiry to be made into the particular circumstances, without prejudice as to the result; and upon that occasion observed, that if a party, having knowledge of his rights, will sit still, and, without asserting them, permit persons to act as if they did not exist, to acquire interests, and consider themselves as owners of property to which the other will not assert his right, there is no reason why every presumption should not arise, as in the case of a bond.—Upon the inquiry which was directed, it appeared that the accounts had been kept so regularly, that there was no difficulty in ascertaining the personal estate at the death of the testator. The Master of the Rolls, upon a full and able view of all the circumstances of the case, decided in favour of the claim of the next of kin. The following are the passages of his opinion more immediately applicable to the subject before us:—'The bill certainly requires very extraordinary circumstances to sustain it at so late a period; and the first question is, whether, at this distance of time, it is too late to make the claim? The question in all the cases is, whether there are motives of public policy, or private inconvenience, to induce the court to say, that under all the circumstances the suit ought not to be entertained? It is a very sensible rule, that parties shall not, by neglecting to bring forward their demands, put others to a state of inconvenience, subjecting them to insuperable difficulties. If, from the plaintiff's lying-by, it is impossible for the defendants to render the accounts he calls for, or it will subject them to great inconvenience, he must suffer, or the court will interpose what is the best ground, public convenience. The question is whether these principles apply to this case? But first, I shall mention another ground; the presumption that the demand itself has in some manner been satisfied or released; that is a ground perfectly different from a bar, and prevails as much in a court of equity, as it has by modern determinations been wisely held to do at law. Every presumption that can be fairly made, shall be made against a stale demand. It may arise from the acts of the parties; or the very forbearance to make the demand affords a presumption, either that the claimant is conscious it was satisfied, or intended to relinquish it.' It will not be necessary to state the examination of the particular circumstances from which his honour very accurately concluded, that it was impossible by any fair presumption to infer, that the parties, being cognizant of their rights, slept upon them, or ever intended to relinquish, what he must say upon the whole complexion of the case, they never knew they had a right to.

"'If the accounts of the personal estate (he proceeded to say) could not now be obtained, and it was impossible to know to what the plaintiffs were entitled, that is a sufficient reason for saying, they should not have it, and rob the charity, because they could not tell what belonged to them, and what to the charity; but that unfortunately is not the case. Therefore, desiring to be understood by no means to give any countenance to those stale demands, but upon the circumstances that there is nothing inducing great public or private inconvenience, that the accounts are found, and that the trustees are not called upon to account for what has been disbursed, I am bound to decide in favour of the plaintiffs.'

[22] "In Blewitt *v.* Thomas, 2 Ves. jun. 669, length of time was pleaded in equity, as matter of defence, and as inducing the presumption, that the demand was satisfied; and the plea was allowed. But in Pearson *v.* Belchier, 4 Ves. 627, the Master of the Rolls, while he held that a bill could not be entertained, on account of length of time, said, that it could not be pleaded in bar in the Court of Chancery. See also as to the following cases respecting the allowance or disallowance of length of time, in opposition to an equitable claim; Earl of Deloraine *v.* Brown, 3 Bro. Ch. 633; Hercy *v.* Dinwoody, 4 Bro. Ch. 257, 2 Ves. jun. 87; Ackerly *v.* Roe, 5 Ves. 565; Harmood *v.* Oglander, 6 Ves. 199, 8 Ves. 106. (1) In the case of Sutton *v.* Earl of Scarborough, 9 Ves. 71. (just published since this sheet was sent to the press) the Court of Chancery allows a plea of the statute of limitations to a bill in the nature of an action for money had and received, both as to the discovery and relief; but the decision does not affect the case of a mere bill of discovery. (2)

[23] "None of the statutes of limitations contain any provision in favour of incorporeal rights, (except in case of rents). According to the rules of law, the right to these can only be founded upon an actual grant, or an immemorial prescription, which supposes a grant. But in order to establish a right, as founded upon a grant, it would be unreasonable to expect the production of the grant itself, as a requisite indispensable to the support of the title which is derived from it. A long continued enjoyment, not otherwise to be accounted for, may, after such a period of time as renders it probable that the deed may be lost or destroyed, be fairly considered as evidence of its former existence; and from such evidence, the jury may be fairly induced to infer the truth of any proposition, which is not opposed by stronger evidence on the other side. But the decisions of our courts have carried the matter much further than is warranted by the mere application of this principle; and under the name of a presumption, have, in effect, rendered the length of enjoyment a direct and substantive title.

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[(1) See further Stackhouse *v.* Bamston, 10 Vesey, 453, and cases there cited. As to limiting an account to six years before the filing the bill, see ibid. and Harmood *v.* Oglander, 6 Vesey, 199, 8 Vesey, 106.]

[(2) See Baillie *v.* Sibbald, 15 Ves. 185.]

[24] " It is held that not only private grants, but records, and even Acts of Parliament, may be presumed from length of time; and so far as any such presumption is founded upon a real unaffected opinion of the truth so presumed, I subscribe to the justice and propriety of the proceeding. Beyond that, whilst I admit that the maintenance of a long established enjoyment is a very desirable object, I cannot forbear entertaining the opinion, that recent decisions have exceeded the proper limits of judicial authority, and have introduced a principle, which, though it is now perhaps only open to controversy, as a matter of speculation, was not warranted by the fair rules of legal argument.

" In the case of the Mayor of Kingston-upon-Hull against Horner, Cowp. 102, a toll had been received by the corporation for upwards of 300 years, but the corporation itself having been created within the time of legal memory, it was impossible that the title could be founded upon prescription; but it was left to the jury to infer from the usage, whether there had not been a grant of the duties subsequent to the charter of incorporation; and the verdict founded upon the presumption of such a grant was supported by the Court of King's Bench. But soon afterwards, Lord Mansfield, in referring to the authority of that case, advanced a position in favour of the principle which I venture to contest. He said, that a grant may be presumed from great length of possession. It was so done in the case of the corporation of Hull against Horner; 'not that in such cases the court really thinks a grant has been made, because it is not probable that a grant should have existed, without its being upon record; but they presume the fact for the purpose, and from a principle of quieting the possession;" Cowp. 214. That is, in a case of adverse right, they profess, by way of form, to believe as true, what, in point of fact, they believe to be false, in order that length of time may, by fiction and circuity, produce an effect to which directly and primarily it is inadequate.

[25] " By statute, any quit-rent which has not been paid for fifty years is extinguished; and there having been no payment of a quit-rent of half-a-crown for thirty-seven years, that circumstance was left to the jury as a ground for presuming an estinguishment or release; but the Court of King's Bench decided, that such a presumption was not warranted by the evidence. Lord Mansfield, on that occasion, adverted to the principle, that the statute of limitations is a positive bar from length of time, and operates so conclusively, that although the jury and the court are satisfied that the claim still subsists, yet they are bound by the statute to defeat it: that there are many cases not within the statute, where, from a principle of quieting the possession, the court has thought that a jury should presume any thing to support a length of possession. He then proceeded to the position from which I have expressed my dissent, and afterwards shewed, from reasoning adapted to the particular case, that there was no ground for inferring an extinguishment. Mr. Justice Aston, in support of the same opinion, observed, that a presumption from length of time to support a right was very different from a presumption to defeat a right; Eldridge *v.* Knott, Cowp. 214.

[26] " But the case which seems to have had the most influence in modern determinations, is that of Lewis *v.* Price, tried before Mr. Justice Wilmot, at Worcester assizes, in the year 1761, in which he said, that where a house had been built forty years, and has had lights at the end of it, if the owner of the adjoining ground builds against them, so as to obstruct them, an action lies, and this is founded upon the same reason as where they have been immemorial; for this is long enough to induce a presumption, that there was originally some agreement between the parties: and he said, that as twenty years was sufficient to give a title in ejectment, on which he might recover the house itself, he saw no reason why it should not be sufficient to entitle him to any easement belonging to the house; Espinasse's Dig. 636. Afterwards, upon a motion for a new trial, twenty years' quiet and uninterrupted possession of ancient lights (*a*) was deemed a sufficient ground, from which a jury might presume a grant; Darwin *v.* Upton, cited 3 T. R. 159. So far as length of time is merely regarded as a circumstance, upon which a jury may exercise their judgment upon the real fact, I have already admitted the propriety of its influence. But now it has become a matter of daily and established practice to adopt Mr. Justice Wilmot's idea to its full extent, that twenty years' possession gives a title to any easement. It is acted upon as a presumption, *juris et de jure*, a legal fiction, upon which any argument or discussion is as much excluded as upon an averment of the defendant's being in the custody of the marshal of the Marshalsea, and not as a mere circumstance open to the discussion and consideration of a jury. (1) And it has even been held, that the forbearance to exercise a right for twenty years shall produce an extinction of the right itself, and that all rights incident to land shall be referred to the criterion of twenty years' enjoyment.

[27] " Having been engaged in opposing the application of that principle, and having in conjunction with some of the most distinguished ornaments of the profession, entertained the idea, that it was a deviation from the regular course of the law, to give the effect of a bar to a

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" (*a*) There seems to be either a redundancy or inaccuracy in this expression. If the meaning was, that an enjoyment of twenty years was sufficient to impress the character of antiquity, the epithet of *ancient* is implied in the statement of the fact. If the word is used in its old and legitimate signification, the term of twenty years is out of the question."

[ (1) In Beeley *v.* Shaw, 6 E. 214, Lord Ellenborough said—" Twenty years' exclusive enjoyment in any particular manner affords a *conclusive presumption* of right, derived from grant or Act of Parliament."]

mere presumption, whilst I submit to the contrary adjudication of the court, I cannot, upon the most frequent consideration, adopt the reasoning upon which that adjudication proceeded; and hope I shall not incur the imputation of presumption, by stating the argument by which it was opposed; fully aware of the influence of that prejudice which results from a professional engagement, and of the deference which is due to judicial authority.

[28] "I would previously suggest, that the analogy stated by Mr. Justice Wilmot is apparently subject to two objections; 1st. It is an analogy of common law, drawn from the provisions of a particular statute. The statute professedly introduces an alteration in the law, and it is the only authority by which such an alteration can be properly made. The courts of justice must take the law as they find it, and are not authorized to say, that because the Legislature has made an alteration, which we find to be beneficial in one case, therefore, we will make an alteration in another case, where the same beneficial effects will probably ensue. But, 2d. the principle of the statute of limitations is, that it operates upon an adverse possession, upon one person enjoying property which another was authorised to claim, and the omission of claiming which is a mark of negligence, and therefore should be discouraged; whereas the use of an easement is not in every instance an usurpation of property; it may not be subject to an action; and whilst the owner of the adjacent property is not injured in his own possession, he has no cause of complaint. But it would be injurious to debar him from the full enjoyment of the rights incident to his own property, such as the building upon his land, because another person had previously built on a contiguous part of the adjoining land, though in doing so, he had not rendered himself liable to any action, but had only been subject to the imputation of folly, by placing his windows in a situation where they were liable to be obstructed. (*a*) Whatever may be fairly ascribed to courtesy or forbearance, ought not hastily to be construed as the exercise of an adverse right; much less should any Act be allowed to have the effects of an adverse possession, where there could be no right of contest, and consequently no imputation of laches.

[29] "In the case of Prescott and Phillips, which was tried at Chester Spring assizes, 1797, it appeared, that the persons under whom the defendant claimed, had an ancient mill and weir, which were permitted to fall into decay; and after a period of twenty years, above nineteen years before the commencement of the action, another mill was erected (upon which it may be assumed, for the purpose of the argument, that there was no alteration in the scite or fall, as no reference was made to these circumstances), no act having been done in the mean time by the owners of the adjacent land, adverse to the right. The judges at the assizes, and afterwards in the Court of King's Bench, were of opinion that the cesser of twenty years in the enjoyment was an extinguishment of the right to the water-course; and, upon that general principle, decided in favour of the plaintiff, treating it as a case which would not even warrant an argument.

"The observations which occurred to the present writer, in support of the position, that it ought not to be presumed that the ancient right was lost or abandoned, were, 1st, That no inconsistent or adverse enjoyment had been acquired; 2d, Because the traces of the ancient right remained at the time of the new erection; 3d, Because so long a period having elapsed since the present erection, without the right being judicially questioned, it ought to be presumed that that was in pursuance of, and connected with, the ancient right. An analogy has been adopted to the Statute of Limitations, in the cases of corporate offices, easements and bonds; but the Statute of Limitations, in cases of ejectment, only operates upon acts of adverse possession, not permitting an undisturbed possession and actual enjoyment to be defeated. In cases of corporate offices, the King's Bench proceeded upon the exercise of a discretionary power, and always in protection of a positive and actual enjoyment. None of the cases embrace the principle, that a right is lost by neglect, there having been no adverse enjoyment; and the protection is merely personal and individual. Upon the death of the corporator, the right reverts according to the original constitution.

"In respect to easements, all the cases are in support of positive acts, as the making windows: there an enjoyment was actually acquired, which the court would not suffer to be defeated. There was a case in Surry, before Lord Mansfield, who laid it down, that an incorporeal right, which, if existing, *must be in constant use*, ought to be decided by analogy to the Statute of Limitations. *Must be in constant use* is emphatic. But *non constat*, that a right must be in constant use, the exercise of which is attended with expense and risk. The party has not submitted to any actual inconvenience, which he might have avoided by the assertion of his right; he has merely not deemed it necessary to exercise a right, which may or may not be beneficial according to times and circumstances; he has not acquiesced in any Act tending to contradict or invalidate it. If A. buys of B. the coals under a piece of land, and of C. a right of road to

(*a*) "If a person places windows contiguous to my land, I must, according to modern practice, put myself to the expense of erecting a building to obstruct them, within the space of twenty years, which may be attended with detriment and inconvenience to me, or I must be decreed to have made a grant and surrender of the rights which previously belonged to me. The practical inconvenience of this is perhaps not very great, with respect to buildings recently erected, for the modern decisions are sufficiently notorious, and the requisite precaution is generally taken; but many rights have been lost or prejudiced, for want of knowing, by the spirit of prophecy, that such a system would have been established."

these coals through a barren moor, (1) and declines getting the coals for twenty years (the place continuing a barren moor), is the grant void or lost? Here, at the time when the mill was suffered to fall into decay, the right was as great as if an original right to dam up the water had been granted at that time. If, after such grant, the plaintiff had made a weir, and enjoyed it for twenty years, the grant or right might be presumed to have been surrendered. That is a case of adverse enjoyment; but merely suffering the river to run in its natural course, is reducing it to the case of a barren moor; and the case of Eldridge and Knott establishes the position, that the mere non-enjoyment of an incorporeal right does not necessarily induce the presumption of its extinguishment. With respect to bonds, a personal demand should, from the nature of it, be recently pursued, and the non-claim of twenty years is a strong presumption of payment; but this is no-wise similar in principle to a right connected with the optional mode of enjoying a real estate.

[30] "The Court of Common Pleas have since decided, in an action brought by the owner of a market at Southall, for erecting another market at Hayes, within three miles, that the erection of pens, and the sale of cattle in them, for twenty years, was a clear bar to the right of action; Holcroft *v.* Heel, 1 Bos. 400.

"The attempt to found a right upon an enjoyment of twenty years was carried to the most extravagant length, in a case which was brought to trial at Lancaster Summer Assizes, 1800. A defendant, in justification of a trespass, pleaded that the owners of a messuage had, from time immemorial, enjoyed the right of shooting upon the plaintiff's land; and it was intended to be proved, that the defendant and his father had been in the habit of sporting there upwards of twenty years. But the counsel for the defendant did not persist in an attempt which could only have subjected themselves to equal ridicule with their client.

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[31] "The present discussion has been composed for several years, and I have ingrafted the substance of it into the view of the decisions of Lord Mansfield; a work in which I have had the mortification to experience a total sacrifice of a considerable portion of assiduity and expence. Since that time, the subject has been before the Court of King's Bench, in the case of Campbell *v.* Wilson, 3 East, 294. The defendant had, for upwards of twenty years, used a way over the plaintiff's land; the right to which, if it really existed, must, from the circumstance of the case, necessarily have commenced within thirty years: but there was evidence to shew that the possession was adverse: on the other side there were circumstances to shew the probability of the claim having originated in mistake. Mr. Justice Chambre observed to the jury, that it was probable that the enjoyment did originate in the mistake supposed; but however that might be, if they were satisfied that it was adverse, and had continued twenty years, it was sufficient ground for presuming a grant. Upon a motion for a new trial, Lord Ellenborough observed, that it came to the common case of an adverse possession of a way for twenty years, without any thing to qualify that adverse enjoyment; and there was no reason why the jury should not, as in other cases, make the presumption, that the defendant acted by right. Mr. J. Grose thought that in substance the question was left to the jury, whether the enjoyment originated in a grant, or in any other manner? and therefore, he could not say, but that upon the evidence the jury might not make the presumption which they had done; though had he been one of them, he did not know that he should have dared to do so. Mr. J. Lawrence said, no doubt adverse enjoyment for twenty years, unexplained, is evidence sufficient for the jury to found a presumption that it was a legal enjoyment. Mr. Justice Le Blanc thought that such length of enjoyment was so strong evidence of a right, that the jury should not be directed to consider small circumstances as founding a presumption that it arose otherwise than by grant. The same learned judge explained the case respecting Hayes market to have only amounted to an intimation, that it would be left to the jury to find for the defendant, upon the ground of presumption of a grant, after twenty years' uninterrupted use. And Mr. J. Grose said, he assented to that case, as so explained, but no further.

"In reviewing the preceding opinions, Mr. Justice Grose seems to concur in the opinion which I have endeavoured to maintain—that the presumption in these cases is real matter of inference, upon which the jury are, as in other cases of circumstantial evidence, to exercise a genuine opinion as to the existence or non-existence of the fact in question. But I cannot concur with him in thinking, that such was really the spirit of the directions to the jury in the particular case. The other judges certainly appear to support the fictitious presumption (*a*)

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[ (1) In Seaman *v.* Vawdrey, 16 Ves. 390 it was held, by the Master of the Rolls, that no presumption occurs from nonuser in case of mines, salt springs, &c.]

(*a*) "There are, in truth, two kinds of presumption acted upon in the law, which scarcely agree in any thing but the name 1st, Inferences of facts really and *bona fide* made; as where a person, having the recent possession of stolen goods, is presumed to be the thief; 2. Presumptions of form; as where a satisfied term is presumed to be surrendered, though, in fact, no such thing is believed to have taken place. And to the latter class, the practical application of the presumption in question is certainly to be referred; because in most of the cases, it is impossible to suppose that any person in his senses can believe the fact to be true, which is said to be presumed. Juries are never called upon to balance between the improbability of an enjoyment having subsisted for twenty years, without a legal grant,

that although in point of fact, no legal title existed, the adverse possession of twenty years was to be deemed sufficient to constitute such title, and that the false supposition of a grant, destroyed by time or accident, was the mode and form in which that right is to be maintained."

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and the opposite and infinitely greater improbability, if so gentle a term can be applied to what is absolutely incredible, that within twenty years a deed creating a right, or even a grant from the crown (an act which must be upon record,) should have actually been made, and that every trace of its existence should be lost and obliterated. [See the Observations of Lord Erskine, in favour of these presumptions; Hilary *v.* Walker, 12 Ves. 239.]

"In fact, courts have departed from their proper province, whenever they have prescribed to a jury the inference which they are to draw from given facts: and twenty years, or any other arbitrary period, can never be the ground of a legitimate inference; which must always depend upon the general combination of circumstances.

"In the case of Campbell *v.* Wilson, the jury were told, that if the enjoyment had been by leave or favour, *or otherwise than as a claim or assertion of a right*, it would repel the presumption of a grant; but this principle would destroy the modern doctrine, so far as relates to the enjoyment of lights, as has already been particularly shewn.

"I will not contend that, after the decisions which have taken place, it may not be more convenient to the public, that the doctrine which has been extensively acted upon in the enjoyment of real estates, should be adhered to than departed from, though of very modern origin. This differs from the cases in which I contend for the departure from erroneous precedent, on account of the consequences being merely prospective: but I shall ever retain the sentiment, that the introduction of such a doctrine was a perversion of legal principles, and an unwarrantable assumption of authority. See the cases upon this subject, collected in Mr. Serjeant Williams's Note to Yard *v.* Ford, 2 Saund. 175." [And see Daniel *v.* North, 11 E. 372. as to the question, how far the presumption attaches against the landlord, while the premises affected are in the possession of a tenant?]

# PART IV.

## CLASS IX.

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### *Juries and Trials.**

* As frequent reference is made to the number of the statutes respecting juries, I have thought it desirable to present a general list of their titles; although most of those which are anterior to the reign of William III. are no longer of any practical importance. In perusing this list, one of the most striking observations is, the number of provisions which occur respecting the harsh and absurd proceeding for correcting erroneous verdicts by *attaint*; and from the attention paid to this procedure by the legislature, it may be reasonably inferred, that the instances of resorting to it were very frequent; and the charges of corruption of juries, and of the sheriffs and other officers entrusted with returning them, are likewise so numerous, that the provisions for repressing those mischiefs were most probably founded upon reasons of imperious necessity. It certainly is one of the most prominent distinctions in favour of later laws, that such charges are very rarely advanced, even by those who are most disappointed by the issue of a trial. Another prominent subject of the statutes was the regulation of issues levied upon the jurors, a measure which is now become entirely obsolete, although the ancient form of the return to the writ of distringas is still continued. The attendance of juries upon trials at bar and other proceedings must, in its nature, have been very onerous; and perhaps few alterations of the law have been more beneficial than those for directing the return of a general panel, and for the regulation of special juries. But complaints are made, apparently not quite without foundation, of the existing mode of selecting special juries in the Metropolis, by forming lists of persons to whom the attendance is an object in point of pecuniary emolument, rather than by summoning, as is the usual course upon trials in the country, gentlemen who are regarded as holding a superior station in point of respectability. In this observation I am very far from intimating an assent to the charges of partiality made against special juries, as contrasted with common ones, upon questions of political feeling. I think it unfortunate that compulsory powers for enforcing the attendance of special jurors in the country are in general neglected, and that their appearance is considered entirely optional: and perhaps the non-attendance of persons of independent situations at the trials in London and Westminster, may have been the occasion of the practice which is at present generally complained of.

The ancient functions of juries were very different ones from the modern one of finding a verdict according to the evidence. The following view of the subject in the reign of Edward I. taken from Mr. Reeves's History of the Law, Vol. II. p. 271., is very striking and important. In this, as in most other respects, the advantage of the modern course of jurisprudence, as applied to an advanced state of society, is very considerable:

"It was many years after this reign, and when the second (since called the *petty*) jury began to be considered rather as judges of the presumption raised by the finding of the presentors, and not as witnesses of the fact, that a kind of evidence used to be exhibited to them. The first evidence made use of in this way consisted of written papers; such as depositions, informations, and examinations, taken out of court: this led by degrees to a sparing use of *vivæ voce* testimony. It was long before they thought it necessary to bring evidence into court in support of the prosecution, and it was still longer before they allowed the prisoner to disprove the indictment by any thing else than the oaths of the twelve *juratí*. When a prisoner was permitted to call witnesses to prove such matter as he offered in his defence, it was a high favour; and depended much on the discretion of the court, and the manner in which the charge had been made out by the prosecutors: besides this the witnesses for the prisoner were never upon oath; which always left a pretence for discrediting their testimony.

"The trial by jury at the time of which we are now writing, was, to all intents and purposes, a trial by witnesses; and, no doubt, deserved all the value that was set on it by our ancestors. When the condition of society so changed, that, notwithstanding all the supposition of their personal knowledge of the fact, as coming from the vicinage, they were in reality wholly ignorant of it, and it was necessary the charge should be *proved* to them, before they could pronounce on the guilt or innocence of the party; then the old proceeding became a piece of mummery, productive of oppression and tyranny, till at length it was softened by the calling of witnesses to inform the conscience of the twelve jurors. This was the last improvement of the trial by jury in criminal cases, and it was not thoroughly effected till the times of Edward VI. and Queen Mary."

No. I. 3 Edward I. c. 38.

[ No. I. ] 3 Edward I. c. 38.—An Attaint shall be granted in Plea of Land touching Frechold.

[ No. II. ] 6 Edward I. c. 2.—In what case Nonage of the Plaintiff shall not stay an Enquest.

[This at length, *infra.*]

[ No. III. ] 13 Edward I. stat. 1. (Westminster second) c. 30.—The Authority of Justices of *Nisi Prius.* Adjournment of Suits. Certain Writs that be determinable in their proper Counties. A Jury may give their Verdict at large. None but which were summoned shall be put in Assizes or Juries.

[Inserted ante, Class I. No. 4.]

[ No. IV. ] 13 Edward I. stat. 1. (Westminster second) c. 31.—An exception to a Plea shall be sealed by the Justices.

[Inserted post., Title *Error*, with Notes.]

[ No. V. ] 13 Edward I. stat. 1. (Westminster second) c. 38.—How many shall be returned in Juries and petit Assizes, and of what Age they shall be.

13 Edward I. st. 1. c. 38.

What sort of persons shall be returned in juries or petit assizes, and of what age they shall be.

What sort of persons shall be returned in great assizes.

"FORASMUCH also as sheriffs, hundreders, and bailiffs of liberties, "have used to grieve those which be in subjection unto them, putting "in assizes and juries men diseased and decrepit, and having continual "or sudden disease; and men also that dwelled not in the country at the "time of the summons; and summon also an unreasonable multitude "of jurors, for to extort money from some of them for letting them go "in peace, and so the assises and juries pass many times by poor men, "and the rich men abide at home by reason of their bribes;" it is ordained, 'That from henceforth in one assize no more shall be summoned 'than four and twenty; and old men, above threescore and ten years, 'being continually sick, or being diseased at the time of the summons, 'or not dwelling in that country, shall not be put in juries of petit 'assizes. Nor any shall be put in assizes or juries, though they ought to 'be taken in their own shire, that hold a tenement of less than the value 'of twenty shillings yearly. And if such assizes and juries be taken out 'of the shire, none shall pass in them but such *as may dispend* (1) forty 'shillings yearly at the least, except such as be witnesses in deeds or 'other writings whose presence is necessary, so that they be able to 'travel. Neither shall this statute extend to great assizes, in which it 'behoveth many times knights to pass, not resident in the country, for 'the scarcity of knights, so that they have land in the shire. And if the 'sheriff, or his under-sheriffs, or bailiffs of liberties, offend in any point 'of this statute, and thereupon be convict, damages shall be awarded to 'the parties grieved, and they shall nevertheless be amerced to the 'king. And justices assigned to take assizes, when they come into the 'shire, shall have power to hear the plaints of all complainants as to the 'articles contained in this statute, and to minister justice in form 'aforesaid.'

(1) This is according to the translation of Cay. In Ruffhead it is erroneously put "but such as hold a tenement of *less than* the value of 40s."

No. VI.
21 Edward I.
stat. 1.

[ No. VI. ] 21 Edward I. stat. 1.—De iis qui ponendi sunt in Assisis.—What Freehold Lands Jurors must have, which shall pass in Trial within the same County or without.*

* Forty Shillings, except in certain cases.

[ No. VII. ] 28 Edward I. stat. 3. c. 9.—What sort of People shall be returned upon every Jury.

[ No. VIII. ] 33 Edward I. stat. 4.—He that challengeth a Jury or Juror for the King shall shew his cause.

[ No. IX. ] 12 Edward II. stat. 1. c. 3.—Inquests and Juries touching Plea of Land shall be taken by *Nisi Prius.*

[ No. X. ] 1 Edward III. stat. 1. c. 4.—Trial of an Averment in a Writ of false Judgment.

1 Edward III. st. 1. c. 4.

'ITEM, it is accorded, ordained, and established in amendment of the law, That when a record cometh into the King's Court by writ of false judgment, in case where the party allegeth that the record is otherwise than the court doth record the same, the averment shall be received of the good country, and of them which were present in the court when the record was made, if they do come with others of the country by the sheriff's return; and if they come not, the inquest shall be taken by the good country.'

[ No. XI. ] 1 Edward III. stat. 1. c. 6.—An Attaint will lie as well upon the Principal as upon the Damages.

[ No. XII. ] 2 Edward III. c. 16.—*Nisi Prius* may be granted as well at the Tenants Suit as the Demandants.

[ No. XIII. ] 5 Edward III. c. 6.—*Nisi Prius* shall be granted in Attaint, but no Essoign or Protection. Days given.

[ No. XIV. ] 5 Edward III. c. 7.—Attaint shall be granted in Trespass, if the Damages pass xls.

[ No. XV. ] 5 Edward III. c. 10.—The Punishment of a Juror that is Ambidexeter, and taketh Money.

[ No. XVI. ] 9 Edward III. st. 1. c. 4.—Trial of a Deed dated where the King's Writ runneth not.

No. XVII. 14 Edw. III. st. 1. c. 16.

[ No. XVII. ] 14 Edward III. st. 1. c. 16.—Before what Persons *Nisi Prius* may be granted.

[Inserted *ante* Class I. No. 13.]

[ No. XVIII. ] 28 Edward III. c. 8.—An Attaint shall be granted as well upon a Bill as upon a Writ of Trespass.

[ No. XIX. ] 28 Edward III. c. 13.—The Warranty of Packing of Wool shall be put out. An Inquest shall be *de Medietate Linguæ* where an Alien is Party.

28 Edward III. c. 13.

'II. AND that in all manner of inquests and proofs which be to be taken or made amongst aliens and denizens, be they merchants or other, as well before the mayor of the staple as before any other justices or ministers, although the King be party, the one half of the inquests or proof shall be denizens, and the other half of aliens, if so many aliens and foreigners be in the town or place where such inquest or proof is to be taken, that be not parties, nor with the parties in contracts, pleas, or other quarrels, whereof such inquests or proofs ought to be taken; and if there be not so many aliens, then shall there be put in such inquests or proofs as many aliens as shall be found in the same towns or places which be not thereto parties, nor with the parties, as afore is said, and the remnant of denizens, which be good men, and not suspicious to the one party nor to the other.' (1)

[ No. XX. ] 34 Edward III. c. 4.—What Sort of People shall be returned upon every Jury.

[ No. XXI. ] 34 Edward III. c. 7.—An Attaint will lie as well in Plea Real as Personal.

[ No. XXII. ] 34 Edward III. c. 8.—The Penalty of a Juror taking Reward to give his Verdict.

[ No. XXIII. ] 38 Edward III. stat. 1. c. 12.—The Punishment of a Juror taking Reward to give Verdict, and of Embraceors.

[ No. XXIV. ] 42 Edward III. c. 11.—Copies of Panels shall be delivered to the Parties six Days before the Sessions.

(1) The statute of the staple, 27 Edward III. c. 8. contained a provision, that upon all plaints before the mayor of the staple between the merchants and ministers thereof, upon which an inquest should be awarded, if both parties were strangers, it should be tried by strangers; if both denizens, it should be tried by denizens; if one a denizen and the other an alien, one moiety of the inquest should be denizens and the other aliens. By stat. 13 and 14 Charles II. "*For preventing Frauds and regulating Abuses in his Majesty's Customs,*" it is provided, that in all suits concerning tonnage and poundage, or ships or goods forfeited for unlawful importation or exportation, there shall not be any party jury, but only such as are the natural and free-born subjects of the King. By the IRISH statute, 29 George II. c. 6. it is provided, that on the trial of any issue between a Protestant and a Papist, it shall be lawful to challenge any Papist returned as a juror: this seems to be repealed by the modern statutes in favour of Roman Catholics; see 2 Gab. 258.—At one period, in France, disputes between Protestants and Roman Catholics were to be decided by a court composed of an equal number of persons of each profession; but this was abolished upon the revocation of the edict of Nantes.

[ No. XXV. ] 7 Richard II. c. 7.—In what case a *Nisi Prius* shall be granted at the Suit of any of the Jurors.

No. XXV. 7 Richard II. c. 7.

[ No. XXVI. ] 9 Richard II. c. 3.—A Writ of Error or Attaint maintainable by him in the Reversion.

[See this at length *infra*.]

[ No. XXVII. ] 2 Henry IV. c. 7.—In what Case the Plaintiff shall not be nonsuit if the Verdict pass against him.

[ No. XXVIII. ] 2 Henry V. stat. 2. c. 3.—Of what Estate those Jurors must be, which are to pass touching the Life of Man, Plea real, or forty Marks Damages.

[ No. XXIX. ] 3 Henry V. stat. 2. c. 5.—In which Courts an Attaint may be brought upon a false Verdict given in the City of *Lincoln*, and by whom it shall be tried.

[ No. XXX. ] 6 Henry VI. c. 2.—How long Time the Copies of Panels in Assise shall be delivered to the Parties before the Sessions of the Justices.

[ No. XXXI. ] 8 Henry VI. c. 29.—An Inquest shall be *de Medietate Linguæ*, where an Alien is Party.

8 H. VI. c. 29.
28 Edw. 3. c. 13.

" ITEM, Whereas in the Parliament holden at *Westminster* the twenty-
" eighth year of King *Edward* the Third, amongst other things in
" favour and liberty of the merchants strangers repairing into the realm
" of *England*, it was ordained, That if a plea or debate be moved before
" the mayor of the staple amongst the merchants or ministers of the
" same, and to try the truth thereof an inquest or proof is to be taken,
" if the one party and the other be strange, it should be tried by
" strangers; and if the one party and the other be denizens, it should be
" tried by denizens; and if the one party be denizen, and the other an
" alien, the one half shall be of denizens, and the other half aliens; and
" moreover, that in all inquests and proofs which shall be taken and
" made betwixt aliens and denizens, be they merchants or other, as well
" before the mayor of the staple as before any other judges or ministers,
" although our Lord the King be party, the one half of the inquest or
" proof should be of denizens, and the other half of aliens, if there be
" so many aliens in the town or place where such inquest or proof is to
" be taken, that be not parties, nor with the parties in contracts, pleas,
" or other quarrels, whereof such inquests or proofs ought to be taken;
" and if there be not so many aliens, then so many aliens shall be put in
" such inquests or proof as shall be found in the same places or towns
" which be not parties thereunto, nor with the parties as before is said,
" and the remnant of denizens which be good men, and not suspect of
" the one party nor of the other. Sithence which ordinance the said
" merchants aliens have been always demeaned and ruled, as well in the
" staples, as in other of the King's courts, after the form of the said
" ordinance, until now of late they have been thereof restrained and
" impeached by colour of another statute made in the Parliament

No. XXXI. 8 Henry VI. c. 29.

2 H. 5. st. 2. c. 3.

" holden at *Westminster* the second year of King *Henry*, Father to our " Lord the King that now is; by which statute for the great mischiefs, " damages, and disherisons, which daily do happen through the realm, " as well in case of the death of a man, as in case of freehold and other " cases, by them that pass in inquests in the said case, which were " common jurors, and other which had but little or nothing to live upon " but by such inquests, and which had nothing to lose because of their " false oaths, whereby they do the more lightly offend their consciences; " and for amendment and correction thereof to be had, it was ordained " and stablished, That no person be admitted to pass in any inquest " upon trial of the death of a man, nor in any inquest between party " and party in plea real and personal, whereof the debt and the da- " mages declared do amount to forty marks, except the same person " have lands or tenements to the yearly value of forty shillings above " all charges; because of which restraint and impeachment so made to " divers merchants aliens, many of the same merchants aliens have with- " drawn and daily do withdraw them, and eschew to come and be con- " versant on this side the sea, and likely it is, that all the same mer- " chants aliens will depart out of the same realm of *England* if the said " last statute be not more plainly declared, and the said merchants " aliens ruled, governed, and demeaned in such inquests, according to " the first ordinance aforesaid, to the great diminishing of the King's " subsidies, and grievous loss and damage of all his said realm of " *England*. Our Lord the King, considering the premises, and how " that it was not the meaning of the said late King, nor of the Lords " Spiritual and Temporal of the said Parliament, to hinder or prejudice " the said first ordinance by the said last statute, and that the said last " statute was made in respect of the mischiefs and disherisons that hap- " pened by the false oaths of the common jurors of the realm of *Eng- " land*, as it appeareth by express words of the same statute, and how " that the said merchants aliens be not common jurors, nor inhabiting " within the said realm, nor may not purchase nor enjoy any lands or " tenements in the same, without the King's special licence;" 'and the 'same our Lord the King, willing therein to provide for the weal and 'profit of him and all his realm, and to eschew the damages and incon- 'veniences which may easily happen in this behalf, and also to give to 'the said merchants aliens the greater courage and desire to come with 'their wares and merchandizes into this realm, by the advice and assent 'of the Lords Spiritual and Temporal, being in this present Parliament, 'hath declared the said last statute, made in the time of his father, to 'be in no wise prejudicial to the said ordinance, nor to extend itself 'but only to the inquests to be taken betwixt denizen and denizen, and 'not to other inquests and proofs aforesaid; and the said first ordinance 'to be effectual and stand in force, and to be put in due execution ac- 'cording to the form of the same, notwithstanding the said last statute, 'or that the aliens have not lands or tenements to the value of forty 'shillings by the year, according to the purport of the same last statute 'and ordinance.'

A confirmation of the statute of 28 Ed. 3. c. 13. ordaining that an inquest shall be *de medietate linguæ*, where an alien is party.

And the statute of 2 H. 5. st. 2. c. 3. limited to inquests taken between denizen and denizen.

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[ No. XXXII. ] 11 Henry VI. c. 4.—The Plaintiffs in Attaint shall recover their Costs and Damages.

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[ No. XXXIII. ] 15 Henry VI. c. 5.—What Sort of Persons may be impanelled upon an Attaint.

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[ No. XXXIV. ] 18 Henry VI. c. 2.—They which have Gavelkind Lands to the yearly Value of Twenty Pounds, may be returned in Attaints.

No. XXXV. 8 Edw. IV. c. 3.

[ No. XXXV. ] 8 Edward IV. c. 3.—An Act for Jurors in Middlesex.

[ No. XXXVI. ] 7 Henry VII. c. 5.—*Riens deins le gard* shall be no Challenge upon any Issue to be tried in London.

[ No. XXXVII. ] 11 Henry VII. c. 21.—The Ability of every Man who shall be impanelled in any Inquest or Attaint in *London*.

[ No. XXXVIII. ] 11 Henry VII. c. 24.—An Attaint shall be maintainable against the Party and Petty Jury: The Process therein, the Ability of the Jurors, the Pleas of the Defendant and Petit Jury, and their Punishment being attainted. Panels returned by the Sheriff to inquire for the King, may be reformed by the Justices. *Last continued by* 1 *H.* 8. *c.* 11.

[ No. XXXIX. ] 3 Henry VIII. c. 12.—The Act that Justices may return Impanels for the King by their Discretions.

3 Henry VIII. c. 12.

'WHEREAS great extortions and oppressions be, and have been within the more party of all the counties and shires within this realm of *England*, by the subtilty and untrue demeanor of sheriffs and their ministers, committed and done unto many persons in great number of the King's subjects, by mean and making and returning at every sessions holden within the said counties and shires, for the body of the shire, in taking and putting in, and returning of names of such persons, as for the singular advantage, benefit, and gain of the said sheriffs and their ministers, will be wilfully forsworn and perjured, by the sinister labour of the said sheriffs and their ministers; by reason whereof many and divers substantial persons (the King's true subjects) contrary to good equity and rightwiseness, have divers times, and many wrongfully, been indicted of divers murders, felonies, and other misbehaviour, by their covin and falsehood, to the utter undoing of their lives, loss of their goods and their lands; by reason whereof they and every of them, in avoiding the untrue trouble and vexation which to them might come and ensue by reason and occasion of the same false indictments, and also sometime by labour of the said sheriffs, divers great felonies and murders concealed, and by the said persons also by the said sheriffs and their ministers partially returned, not presented, be and have been compelled to make fines and give rewards to the said sheriffs and their ministers;' &c. &c.

[ No. XL. ] 4 Henry VIII. c. 3.—The Act concerning Juries in *London*.

[ No. XLI. ] 5 Henry VIII. c. 5.—An Act concerning Jurors in *London*.

No. XLII. 23 H. VIII. c. 3.

[ No. XLII. ] 23 Henry VIII. c. 3.—An Act against Perjury and untrue Verdicts.

[ No. XLIII. ] 23 Henry VIII. c. 13.—An Act for Trial of Murders in Cities and Towns.

[Given at length, *infra*.]

[ No. XLIV. ] 26 Henry VIII. c. 4.—For Jurors in Wales.

[Given at length, *infra*.]

[ No. XLV. ] 35 Henry VIII. c. 6.—The Bill for the better Appearance in the *Nisi Prius*.

[ Made perpetual 2 and 3 Edward VI. c. 32.]

35 Henry VIII. c. 6.

*Tales de circumstantibus* at the plaintiff's or defendant's request.

V. AND for a more speedy trial of issues to be tried by the verdict of twelve men, hereafter to be had,

VI. Be it further enacted by the authority aforesaid, That in every such writ of *habeas corpora*, or *distringas*, with a *Nisi Prius*, where a full jury shall not appear before the justices of assizes or *Nisi Prius*, or else after appearance of a full jury, by challenge of any of the parties the jury is like to remain untaken for default of jurors, that then the same justices, upon request made by the party plaintiff or defendant, shall have authority by virtue of this Act to command the sheriff, or other minister or ministers to whom the making of the said return shall appertain, to name and appoint, as often as need shall require, so many of such other able persons of the said county then present at the said assizes or *Nisi Prius*, as shall make up a full jury; which persons so to be named and impanelled by such sheriff, or other minister or ministers, shall be added to the former panel, and their names annexed to the same.

Challenges of the tales.

VII. And that every of the parties shall and may have his or their challenge to the jurors so named, added, and annexed to the said former panel by the said sheriff or other minister or ministers, in such wise as if they had been impanelled upon the *venire facias* awarded to try the said issue; and that the said justices shall and may proceed to the trial of every such issue with those persons that were before impanelled and returned, and with those newly added and annexed to the said former panel by virtue of this Act, in such wise as they might or ought to have done, if all the said jurors had been returned upon the writ of *venire facias* awarded to try the said issue.

VIII. And that all and every such trial had after the said first day of *April*, shall be as good and effectual in the law, to all intents, constructions and purposes, as if such trial had been had and tried by twelve of the jurors impanelled and returned upon the writ of *venire facias* awarded to try such issue.

IX. And in case such persons as the said sheriff, minister or ministers, shall name and appoint, as is aforesaid, or any of them, after they shall be called, be present, and do not appear, or after his or their appearance done wilfully withdraw him or themselves from the presence of the court, that then such justices shall and may set such a fine upon every such juror making default, or wilfully withdrawing himself, as is aforesaid, as they shall think good by their discretion; the said fine to be levied in such manner and form as issues forfeited and lost by jurors for default of their appearance at the common law have been accustomed to be levied.

[ No. XLVI. ] 4 and 5 Philip and Mary, c. 7.—An Act to make up the Jury with Circumstantibus, where the King and Queen's Majesty is a Party.

No. XLVI. 4 & 5 P. and Mary, c. 7.

[ No. XLVII. ] 5 Elizabeth, c. 25.—An Act to fill up Juries lacking in *Wales de circumstantibus.*

[See this at length, *infra.*]

[ No. XLVIII. ] 14 Elizabeth, c. 9.—An Act declaring that the Tenant and Defendant may have a *tales de circumstantibus*, as well as the Demandant or Plaintiff.

[ No. XLIX. ] 18 Elizabeth, c. 12.—An Act for Trial of *Nisi Prius* in the County of *Middlesex.*

18 Elizabeth, c. 12.

Issues joined in the Chancery, King's Bench, Common Pleas, or Exchequer may be tried by *nisi prius* in Westminster Hall.

'WHEREAS heretofore all issues joined in any of the courts of record at *Westminster*, triable in the county of *Middlesex*, have 'been usually tried at the bars in the said courts in *Westminster:* And 'whereas a great number of actions have of late years been brought in 'the said county of *Middlesex*, for speediness of trial, and that for small 'causes, by reason whereof the judges of the same courts have not 'only been letted and hindered in their proceedings in matters of great 'weight depending before them by demurrer or otherwise, to the great 'delay of justice, and occasion of great expenses and charges of a 'number of the Queen's Majesty's most loving subjects, but also to the 'great trouble and charge of the freeholders of the said county who 'are compelled to give daily attendance at the several bars of the same 'several courts for the trial of the said issues:' For reformation whereof Be it enacted by the Queen's most excellent Majesty, our Sovereign Lady, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from henceforth the Chief Justice of *England*, for the time being, upon issues joined or to be joined in the court called the King's Bench, or in the Court of Chancery, the Chief Justice of the Common Pleas for the time being, upon issues joined or to be joined in the Court of Common Pleas, and the Chief Baron of the Exchequer for the time being, upon issues joined or to be joined in the Court of the Exchequer, or in the absence or default of any of them, two other judges or barons of the same several courts where it shall happen either of the same Chief Justices, or the Chief Baron for the time being, to be absent, shall or may at their discretions, within the said hall called *Westminster Hall*, in *Westminster*, or in the place where the Court of Exchequer is commonly kept in the said county of *Middlesex*, as justices of *Nisi Prius* for the said county of *Middlesex*, within the term-time, or within four days next after the end of every or any term severally, try all manner of issues joined or to be joined in any of the said several courts, which by the ordinary course of the laws of the realm ought to be tried in any of the said courts by an inquest of the said county of *Middlesex:* And that commissions and writs of *nisi prius* shall be awarded in such cases, and in such form, as they are or have been used in any other shire of this realm: And that it shall be lawful for any person or persons from henceforth, upon reasonable warning given to the adverse party or his or their attorney, as hath been accustomed in such like cases, to take or sue forth writs and records of *nisi prius*, for the trial of the said issues in the said county of *Middlesex*, as they may do upon any issue joined, triable in any other county, and thereupon take the jury in such manner and form, and with awarding of

By 12 Geo. I. c. 31. s. 1., the trial may be within eight days after term.

No. XLIX. 18 Elizabeth, c. 12.

The sheriff of Middlesex his attendance.

*tales de circumstantibus*, and awarding the nonsuit, as is used for the trial of issues joined, or nonsuits to be awarded, in the said courts, or any of them, triable within the city of *London*, or within any other county of this realm of *England*: And that the sheriffs of the said county of *Middlesex*, for the time being, shall make return of all writs of *nisi prius* which shall be delivered to them, or to their or to any of their sufficient deputy for the time being, before the said judges, baron or barons and every of them, and shall give their attendance upon the said justices, baron and barons, as well for the returning of such *tales* as shall be prayed *de circumstantibus*, for the trying of the said issues, as for the doing and executing of all other thing and things to the office of sheriff in such case belonging and appertaining: And that all persons to be impanelled in such juries, and the parties to the same issues and suits, and the witnesses for the same, shall be charged and bound in such and the like sort, and upon like pains and penalties for their not appearance and attendance, or for their or any of their misdemeanour or default before the said justices of *nisi prius*, as they should have been, if the same issue had been tried in the court from whence the *nisi prius* thereof was awarded: All which several trials so to be had before the said several justices, baron or barons, shall by authority of this present Parliament stand and be as good and available in law, as if the same had been tried in the term-time, at the bar in the court where such issue was joined or triable; any law, usage, or custom heretofore made, used or accustomed to the contrary hereof in any wise notwithstanding.

The jurors and parties witnesses bound by the trial.

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## [ No. L. ] 27 Elizabeth, c. 6.—An Act for returning of sufficient Jurors, and for better Expedition of Trials.

27 Elizabeth, c. 6.

'FOR the returning of more able and more sufficient jurors for 'trials to be hereafter had between party and party, and for re-'formation of abuses in sheriffs and other ministers, who for reward 'oftentimes do spare at home the most able and sufficient freeholders, 'and return the poorer and simpler sort, least able to discern the causes 'in question, and most unable to bear the charges of appearance and 'attendance in such cases;' Be it ordained and enacted, &c.

[I. What jurors and issues shall be returned; how the sheriff shall be punished for returning one summoned that is not, or for taking reward to spare any, &c. *Venire facias.* Where each juror must dispend 4*l.* of freehold.]

[II. Issues returned upon jurors.]

[III. Issues returned upon a juror not summoned.]

Receiving reward for not returning of a juror.

IV. And be it further enacted by the authority aforesaid, that if any sheriff, under sheriff, sheriff's deputy, sheriff or under sheriff's clerk, or any bailiff of franchise, shall at any time after the end of this present session of Parliament, receive, take or have, by himself or by any other, any sum of money, reward or any other profit, directly or indirectly, or do take any promise, make any agreement or assent, to have any sum of money, reward or other profit, directly or indirectly, of any person or persons, for the sparing, not warning, or not returning of any person to be sworn as a juror, for the trial of any issue joined or to be joined in any of the Queen's Majesty's Courts aforesaid, or before any justices; that then every sheriff, under sheriff, sheriff's deputy, sheriff or under sheriff his clerk, or bailiff of liberty or franchise, so offending, to forfeit for every such offence the sum of five pounds; the one moiety thereof to our Sovereign Lady the Queen's Majesty, and the other moiety thereof to such person and persons as will sue for the same in any court of record, by action of debt, bill, plaint or information, wherein no essoign, protection, or wager of law shall be allowed to the defendant.

[V. Two hundreders sufficient in a personal action.]

[VI. Other challenges.]

[VII. Juries returned in a corporate town, or Wales.]

## [ No. LI. ] 27 Elizabeth, c. 7.—An Act for Reformation of Abuses in Collection of Issues lost by Jurors.

No. LI. 27 Elizabeth, c. 7.

'WHEREAS there are within this realm of *England*, in sundry counties of the same, divers freeholders of one name, and 'often and sundry times some one or more of them being returned and 'impanelled in juries for trial of matters between party and party; and 'if it happen any one of them so returned to make default, or lose issues, when the same are estreated to be levied, the bailiff or other 'collectors thereof, for lucre and gain, do demand and require the 'same of every one within the same county that is of that name; and 'do persuade every person that is dwelling in that county and so named, 'that he is the party that hath lost those issues, and compel him to pay 'the same by the distress of his or their goods and chattels, to their 'great molestation and trouble; and yet nevertheless many times do 'detain and keep all or the more part of the issues so collected, to 'their own use, in contempt of the Queen's Majesty's laws, and to the 'great grievance of her loving subjects, and contrary to all equity and 'good conscience.'

No jurors shall be returned without addition of his dwelling-place, and how issues lost shall be levied.

[II. The dwelling-place of every juror shall be returned. In every extract of issues against a juror, his addition shall be put.]

[III. What officers have authority to hear and determine the offences aforesaid.]

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## [ No. LII. ] 16 and 17 Charles II. c. 3.—An Act for the returning of able and sufficient Jurors.*

*This was a temporary Act, to continue three years. The jurors for the trial of issues were required to have 40*l.* per annum, freehold.

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## [ No. LIII. ] 4 and 5 William and Mary, c. 24.—An Act for reviving, continuing, and explaining several Laws therein mentioned which are expired and near expiring.

[Further parts of this, *supra et infra*.]

4 and 5 William and Mary, c. 24.

16 and 17 Ch. 2. c. 3.

'XV. AND whereas a certain Act made at the session of Parliament held in the sixteenth and seventeenth years of the reign of 'the late King *Charles* the Second, intituled, "An Act for returning 'of able and sufficient jurors," is expired;' be it enacted by the authority aforesaid, That all jurors (other than strangers upon trials *per medietatem linguæ*) who are to be returned for trials of issues joined in any of the courts of King's Bench, Common Pleas, or Exchequer, or before justices of assize, or *nisi prius*, oyer and terminer, gaol delivery, or general quarter sessions of the peace from and after the first day of *May*, One thousand six hundred ninety-three, in any county of this realm of *England*, shall every of them have in their own name, or in trust for them, within the same county, ten pounds by the year at least above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demesne, or in rents, or in all or any of the said lands, tenements, or rents, in fee-simple, fee-tail, or for the life of themselves or some other person: And that in every county of the dominion of *Wales* every such juror shall then have within the same county six pounds by the year at least, in manner aforesaid above reprizes. All which persons having such estates as aforesaid, are hereby enabled and made liable to be returned and serve as jurors for the trial of issues before the courts and justices aforesaid; any law or statute to the contrary in any wise notwithstanding. And if any of a lesser estate and value shall be respectively returned upon any such jury, it shall be

All jurors to have 10*l.* per ann.

Welsh jurors 6*l.* per ann.

No. LIII. 4 & 5 W. and Mary, c. 24.

a good cause of challenge, and the party returned shall be discharged upon the said challenge, or upon his own oath of the truth of the said matter. And that no juryman's issues, making default, shall be saved, but by special order of the court or judges before whom the issue is to be tried, for some reasonable cause proved upon oath before the same court or judges; and all such issues shall be duly estreated and levied; and the writ of *venire facias*, which from and after the time aforesaid shall be awarded and directed for the impanelling of juries in causes aforesaid, within any county of *England*, shall be after this form:

Issues shall be duly estreated. Continued with 7 W. 3. c. 32.

Form of *venire*.

REX, &c., præcipimus, &c. quod venire fac' coram, &c. Duodecim liberos et legales homines de Vicineto de A. quor' quilibet habeat Decem librat' Terræ, Tenementor' vel Redituum per Annum ad minus, per quos, &c. et qui nec, &c.

And the residue of the said writ shall be after the ancient manner; and that the writs which shall be awarded and directed for the returning of juries within the dominion of *Wales*, shall be made in the same manner, altering only the word *decem* for *sex*; and that upon every such writ or writs of *venire facias*, the sheriff, coroner, and other ministers of each respective county in *England* and *Wales*, unto whom the making of the panel shall appertain, shall not return in any such panel any person, unless he shall then have ten pounds, or six pounds, respectively by the year at least, as aforesaid, in the same county where the issue is to be tried; upon pain to forfeit for every person being returned in any such panel, that shall not then have ten pounds or six pounds respectively as aforesaid, the sum of five pounds to their majesties, their heirs and successors.

Penalty upon sheriff otherwise returning.

Penalty upon sheriff returning without six days' summons, &c.

XVI. And be it further enacted, That no sheriff or bailiff of any liberty or franchise, or any of their or either of their ministers, shall return any such person or persons as aforesaid, to have been summoned by them, or any of them, unless such person and persons shall have been duly summoned by the space of six days at the least, before the day on which they ought to make their appearance; nor shall directly or indirectly take money or other reward to excuse the appearance of any juror, by any of them to be summoned or returned, upon pain to forfeit for every such offence the sum of ten pounds to their Majesties, their heirs and successors.

Boroughs, &c. excepted.

XVII. Saving nevertheless to all cities, boroughs, and towns corporate, their ancient usage of returning jurors of such estate, and in such manner, as heretofore has been used and accustomed; any thing in this Act contained to the contrary notwithstanding.

Tales 5*l.* per annum.

XVIII. Provided nevertheless, That it shall be lawful to return any person to serve upon the *tales* in any county within the kingdom of *England*, who shall have within the same county five pounds by the year, above reprizes, in manner aforesaid, and not otherwise.

Welch tales 3*l.* per ann.

XIX. Provided nevertheless, That it shall be lawful to return any person to serve upon the *tales* in any county within the dominion of *Wales*, who shall have within the same county three pounds by the year, above reprizes, in manner aforesaid, and not otherwise.

10*l.* penalty upon officer taking fee for returning any tales.

XX. And be it further enacted by the authority aforesaid, That no fee or reward whatsoever shall be taken by any sheriff, clerk of assizes, or any other officer or person whatsoever, for the returning of any *tales*, or upon the account of any *tales* returned, upon pain of forfeiting for every such offence the sum of ten pounds, whereof one moiety to be to the use of the prosecutor, and the other moiety to the use of their Majesties, their heirs and successors, to be recovered by action of debt, bill, plaint, or information, wherein no essoign, protection, or wager of law, or more than one imparlance shall be allowed.

*Non ponend'* grantable upon oath only.

XXI. And be it further enacted, That no writ *de non ponendis in assisis et juratis*, shall be hereafter granted, unless upon oath made, that the suggestions upon which the said writ is granted are true.

XXII. And be it enacted, That so much of this present Act as does relate to the returning of jurors, shall be in force for the space of three years, from the said first day of *May*, one thousand six hundred ninety three, and from thence to the end of the next Session of Parliament. [Farther continued by 9 Geo. 1. c. 8. s. 2.]

No. LIII. 4 & 5 W. and Mary, c. 14.

Act to continue three years, as to return of jurors.

## [ No. LIV. ] 6 & 7 William III. c 4.—An Act for exempting Apothecaries from serving the Offices of Constable, Scavenger, and other Parish and Ward Offices, and from serving upon Juries.

[II. Apothecaries within London, and seven miles thereof, exempt from offices.]

[III. Country apothecaries who have served seven years exempted from offices.]

[IV. This Act to continue seven years.]

[Continued 1 Anne, c. 11.; and made perpetual 9 Geo. I. c. 8.]

## [ No. LV. ] 7 & 8 William III. c. 32.—An Act for the Ease of Jurors, and better regulating of Juries.

7 & 8 William III. c. 32. 3 Geo. 2. c. 25.

'WHEREAS for trials of causes upon writs of nisi prius, and other 'causes at assizes, the sheriffs do return a competent number of 'jurors for such services; but it often happens, that many of the causes, 'which are brought down for trial, do not go on to be tried at the first 'assizes, but are brought down again to be tried at some other subsequent assizes, whereby the jurors returned to try such causes are compelled to attend at several assizes for trial of one and the same cause, 'to their very great expense and trouble; and forasmuch as by partiality and favour of sheriffs, the corruption of officers, and many 'other evil practices, the service of jurors has been found to be very 'burdensome and grievous:' for remedy whereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if at any time hereafter, any plaintiff or demandant, in any cause depending in any of the courts at *Westminster*, which shall be at issue, shall sue forth, or bring to any sheriff, any writ of *venire facias*, upon which any writ of *habeas corpora* or *distringas*, with a *nisi prius*, shall issue, in order to the trial of such issue at the assizes, and that such plaintiff or demandant shall not proceed to the trial of the said issue at the said first assizes after the *teste* of every such writ of *habeas corpora* or *distringas*, with a *nisi prius*, that then, and in all such cases, (other than where views by jurors shall be directed), the plaintiff or demandant, whensoever he shall think fit to try the said issue at any other assizes, shall sue forth and prosecute a new writ of *venire facias* directed to the sheriff in this form:

If plaintiff sue forth a *venire facias*, &c. in order to trial and proceed not, the issue may be tried at any other assize.

'Quod de novo venire facias coram, &c. duodecim liberos et le-'gales homines de vicineto de A. quorum quilibet habeat decem librat' 'terræ tenementor' vel redditumum per annum ad minus, per quos, &c. 'Et qui nec, &c.'

And the residue of the said writ shall be after the ancient manner; which writ being duly returned and filed, a writ of *habeas corpora*, or *distringas*, with a *nisi prius*, shall issue thereupon, (for which the ancient and accustomed fees shall be taken, and no more, as in the case of the *plurics habeas corpora*, or *distringas*, with a *nisi prius*), upon which the plaintiff or demandant shall and may proceed to trial, as if no former writ of *venire facias* had been prosecuted or filed in that cause, and so *toties quoties* as the case shall require: And if any de-

Defendant trying any issue joined against him, may sue a new *venire facias*, and prosecute the same by *habeas corpora*, or *distringas*.

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fendant or tenant, in any action depending in any of the said courts, shall be minded to bring to trial any issue joined against him, when by the course in any of the said courts he may lawfully do the same by *proviso*, such defendant or tenant shall or may, of the issuable term next preceding such intended trial, to be had at the next assizes, sue out a new *venire facias* to the sheriff, in form aforesaid, by *proviso*, and prosecute the same by writ of *habeas corpora*, or *distringas*, with a *nisi prius*, as though there had not been any former *venire facias* sued out or returned in that cause, and so *toties quoties* as the matter shall require.

Writs of *ven' fac'*, &c., to be good in law.

'II. And be it also enacted and declared by the authority aforesaid, That every writ of *venire facias*, and every writ of *habeas corpora*, or *distringas*, with a *nisi prius*, sued out and prosecuted, according to the purport and direction of this Act, and all trials, entries, and proceedings thereupon, shall be good and warrantable by law, and not be erroneous, or be assigned or assignable for error; any former law or usage to the contrary thereof in any wise notwithstanding.'

On writs of *Hab' Corp'*, &c. on default of a sufficient number of jurors, others to be returned, 35 H. 8. c. 6.

'III. And forasmuch as very frequently unfit persons are named by 'sheriffs or their under sheriffs to serve as jurors upon the *tales*, where 'a *tales* may be prayed or demanded, by virtue of the statute in that 'case provided;' Be it further enacted by the authority aforesaid, That in every writ of *habeas corpora*, or *distringas*, with a *nisi prius*, where a full jury shall not appear before the justices of assize or *nisi prius*, or else after appearance, where by challenge of either of the parties the jury is like to remain untaken for default of jurors, the sheriff or other minister or ministers, to whom it shall appertain to return the tales-men, shall, upon the awarding the *tales*, at the command of such justice or judge of assize, return freeholders or copyholders of the county where the cause is to be tried, who shall be returned upon some other panel to serve at the same assizes, and shall be then attending the court where such trial is to be had, to serve upon such *tales*, and not any others, if so many out of the other panels be present in court, or can there be found; and that either of the parties, plaintiff or defendant, demandant or tenant, shall and may have his challenge to the jurors so named, added, and annexed, to the said former panel, by the sheriff or other minister or ministers aforesaid, in such wise, as if they had been impanelled upon the *venire facias* awarded to try the issue; and that the said justices and judge of assize shall and may proceed to the trial of every such issue, with those persons who were before impanelled and returned, with these tales-men so newly added and annexed to the said former panel by virtue of this Act, in such case as he or they might and ought to have done, if all the said jurors returned upon the writ of *venire facias* awarded to try the said issue had appeared to try the same; and that all and every such trial had, after the four and twentieth day of *June* One thousand six hundred ninety six, shall be good and effectual in the law, to all intents, constructions, and purposes whatsoever: And in case any such freeholder, or copyholder, as the said sheriff, or minister or ministers shall return upon the *tales*, as is aforesaid, being present at such return made, shall be called and not appear, or after his or their appearance, shall wilfully withdraw himself from the said service, then in such case the justices or judge of assize, who shall award such *tales*, shall and may set a fine upon every such person making default, or wilfully withdrawing himself.

Plaintiff or defendant may challenge such jurors, as if impanelled on the *ven' fac'*.

Judge may proceed to trial.

Freeholder, &c. not appearing, to be fined.

Constables, &c. to give in a list of persons fit to serve on juries, with their places of abode, and titles.

IV. And that all sheriffs of counties may be the better informed of persons qualified, who are to be returned for trials of issues joined in the Courts of *Chancery*, *King's Bench*, *Common Pleas*, or *Exchequer*, or to serve upon juries at assizes, sessions of *Oyer* and *Terminer*, general gaol delivery, and sessions of the peace: Be it further enacted by the authority aforesaid, That all constables, tythingmen, and headboroughs of towns in each county, or their deputies, or some or one of them, shall yearly at the general quarter sessions of the peace to be holden for each county, riding, or division, or any part thereof, in the week after the feast of Saint *Michael* the Archangel, upon the first day

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of the said sessions, or upon the first day that the said sessions shall be held by adjournment at any other particular division or place, return and give a true list in writing of the names and places of abode of all persons within the respective places, for which they serve, qualified to serve upon such juries, with their titles and additions, between the age of one and twenty years and the age of seventy years, to the justices of the peace in open court; which said justices, or any two of them, at the said sessions, in the respective counties, ridings, or divisions, shall cause to be delivered a duplicate of the aforesaid returned list, by the clerks of the peace of every county or riding, to the sheriffs or their deputies, on or before the first day of *January* next following, and cause the said lists to be fairly entered into a book, by the clerk of the peace, to be by him provided and kept for that purpose amongst the records of the said court of sessions; and no sheriff shall impanel or return any person or persons to try any of the issues joined in any of the said courts, or to be or serve in any jury at the assizes, sessions of oyer and terminer, gaol delivery, or sessions of the peace, that shall not be named or mentioned in the said list; and any constable, tythingman, or headborough, failing at any time to make the return aforesaid, shall forfeit and incur the penalty of five pounds to his Majesty and successors, to be recovered by bill, plaint, or information.

Constables subscribing such lists in the presence of one justice, &c. is sufficient by 3 Geo. 2. c. 25. sect. 6.

'V. And that the summons of persons qualified for the services aforesaid may not be so uncertain as hath been practised by officers therein, 'to the great injury and grievance of persons liable to the aforesaid 'services,' Be it further enacted by the authority aforesaid, That every summons of any person qualified to any of the aforesaid services shall be made by the sheriff, his officer or lawful deputy, six days before at the least, shewing to every person so summoned the warrant, under the seal of the office wherein they are nominated and appointed to serve; and in case any juror so to be summoned, be absent from the usual place of his habitation at the time of such summons, in such case notice of such summons shall be given by leaving a note in writing, under the hand of such officer, containing the contents thereof, at the dwelling-house of such juror, with some person there inhabiting in the same.

Summons to be made by the sheriff under seal six days before the juror is to serve.

VI. And, to the end that sheriffs may not incur any penalty, to suffer any damage, by summoning or returning any person named in the lists or books of jurors transmitted to them from the respective quarter-sessions as aforesaid, for not having such estates as qualify such persons to be jurors: Be it enacted by the authority aforesaid, That the said return to the said justices shall be a good excuse and bar in law for the said sheriff for such summons and returns; and if any action or information shall be brought or prosecuted against any sheriff for such return, the said sheriff may plead the general issue, and give this act in evidence; and if the plaintiff be nonsuited, discontinue his action, or if a verdict be given for the defendant, or a *noli prosequi* be entered in any information, or a verdict pass for the defendant thereupon, the plaintiff or informer shall pay treble costs, to be awarded by the court, in which such action or information was prosecuted, and levied by usual process: And if the said sheriff, his deputy or deputies, bailiff or bailiffs, shall summon and return any freeholder or copyholder, to any of the aforesaid services, otherwise than as aforesaid, or in any ways neglect his or their duty or duties in the service or services of them required respectively by this Act, or excuse any person or persons for favour or reward, or allow of any writ of *non ponendis in assizis et juratis*, or other writ, to excuse or exempt any person or persons from the service of any jury or juries, under the age of seventy years, such sheriff, deputy, or bailiff shall, for every transgression committed against this Act, forfeit the sum of twenty pounds, to be recovered by such party or parties grieved or injured, or whom else shall sue for the same, in any of the courts of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, privilege, protection, or wager of law, shall be allowed, nor any more than one imparlance.

Return to the justices a good excuse for the sheriff, &c.

'VII. And whereas the county of *York* (being a very large county)

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None to be a juryman in Yorkshire above once in four years, city of York and Kingston upon Hull excepted.

Explained by 10 Ann. c. 14. § 5. as to sessions of the peace in Yorkshire.

Sheriff of York to register the names of all who serve on juries in a book alphabetically.

By 3 and 4 Ann. c. 18. § 3. sheriff not keeping a register forfeits 100*l.*

'hath many persons therein qualified to serve upon juries at assizes, 'general gaol delivery, and sessions of the peace; yet by the corrup-'tion of sheriffs, and their under officers, the burden of that service is 'forced upon a very few, to their oppression and grievance;' Be it therefore further enacted by the authority aforesaid, That from and after the four and twentieth day of *June* One thousand six hundred and ninety-six, no person shall be returned or summoned to serve upon any jury at the assizes, or general gaol delivery, to be holden for the said county of *York*, or at any sessions of the peace to be holden for any part thereof (the city of *York*, and county of the said city, and town and county of *Kingston* upon *Hull* excepted) above once in four years: And to the end it may appear what persons have been summoned, and have served as jurors at any former assize or gaol delivery to be holden for the said county of *York*, or at any sessions of the peace holden for any part of the said county of *York*; every sheriff of the said county for the time being shall prepare and keep a book or register, wherein the names of all such persons who have served as jurors, with their additions and places of abode, and the times and places of such their services, shall be alphabetically entered and registered, which books and registers shall from time to time be delivered over to the succeeding sheriff of the said county, within ten days after he shall be sworn into his office; and every juror who shall be summoned, and shall serve at any the said assizes, general gaol delivery, or sessions aforesaid, shall and may, at the end of every such assize and general gaol delivery, or sessions aforesaid, repair to the sheriff, or under sheriff of the said county for the time being, to have his and their names entered in the said book or register kept for the purpose aforesaid, of which he shall have a certificate upon his immediate request *gratis*, from the sheriff, or under sheriff for the time being, testifying such his attendance and service done.

One panel of 48 freeholders, &c. ten panels of 24 jurors, &c.

'VIII. And whereas two several panels of jurors have been usually 'returned to serve on the grand inquest; and that many more panels 'have been sometimes returned for trials in civil causes, at the assizes 'held for the said county of *York*; which was found to be more than 'necessary, and burthensome to the persons there qualified for the said 'service;' Be it further enacted by the authority aforesaid, That from henceforth any one panel consisting of forty-eight freeholders and copyholders, and no more (each person having fourscore pounds land *per annum*) shall be returned to serve on the grand inquest, and no more than ten panels, consisting of twenty-four jurors in each panel, shall be returned to serve upon trials in civil causes, at any assizes to be holden for the said county of *York* (except only where special juries are directed to be returned by rule of court) and that at no one quarter-sessions of the peace, to be holden for the said county, or within any of the ridings within the same, or in any place where such sessions of the peace shall be holden by adjournment, or otherwise, within the same county, shall be returned above the number of forty persons, to serve either upon the grand inquest, or other service there; any law or usage to the contrary notwithstanding.

Not above 40 persons to be returned on the grand inquest for the county of York.

Inhabitants of Westminster exempted from serving on juries for the county of Middlesex.

'IX. And whereas the inhabitants of the city and liberty of *West-'minster* serve in all juries in the Courts of *King's Bench*, *Common Pleas*, 'and *Exchequer*, and likewise at the sessions of the peace which (by 'virtue of his Majesty's commission) is quarterly held for the said city 'and liberty;' Be it further enacted by the authority aforesaid, That from henceforth the said inhabitants of the city and liberty of *Westminster* shall be, and are hereby exempted from serving in any jury at the sessions before the justices of the peace for the county of *Middlesex*.

4 & 5 W. & M. c. 24.

Made perpetual by 3 Geo. 2. c. 25. and 6 Geo. 2. c. 37.

'X. And whereas by an Act made in the fourth and fifth years of the 'reign of King *William* and Queen *Mary*, intituled, "An Act for re-'viving, continuing, and explaining several laws therein mentioned, 'which are expired, and near expiring," amongst other things, there 'were several good clauses and provisions made and enacted, for return-'ing able and sufficient jurors for trials of issues joined in any of the 'Courts of *King's Bench*, *Common Pleas*, or *Exchequer*, or before jus-

'tices of assize, or *Nisi Prius*, *Oyer* and *Terminer*, gaol delivery, or 'general quarter sessions of the peace; which Act as to so much thereof 'as did relate to the returning of jurors, was to be in force for the space 'of three years, from the first day of *May* One thousand six hundred 'ninety-three, and from thence to the end of the next session of Par-'liament, which by experience hath been found beneficial and useful;' Be it enacted by the authority aforesaid, That the said Act, as to so much thereof as doth relate to the returning of jurors, shall be and is hereby continued, and shall be in force, together with this Act, for the space of seven years, from the first day of *May* One thousand six hundred ninety-six, and from thence to the end of the next session of Parliament, and no longer.

as to the returning able jurors, continued for seven years.

XI. Provided always and be it enacted by the authority aforesaid, That this Act, or the said Act, or any thing therein contained, shall not extend to give or require any longer time for the summoning of any juries that are to try any issues joined in any of the said courts, that are triable by jurors of the city of *London*, or county of *Middlesex*, than was by law required before the making of the said Act; nor shall extend or be construed to give any longer time, or other day, for the return of any writ, precept, or process of *venire facias*, *habeas corpora*, or *distringas*, for the summoning, attaching, or distraining of any jury to appear, than was by law required before the making of the said Act; but that where there shall not be six days between the awarding of such writ, precept, or process, and return thereof, every juror may be summoned, attached, or distrained to appear, at the day and time therein mentioned or appointed, as he might have been before the making of the said Act; any thing herein or therein contained to the contrary in any wise notwithstanding.

Neither of the Acts to give longer time for summoning juries, than by law required, nor for return of writs, &c.

Juror to appear at the time appointed, &c.

XII. Provided, That this Act, or any thing therein contained, shall not extend to the city of *London*, nor to any other county of any city or town within this realm, nor to any town corporate that have power by charter to hold sessions of gaol delivery, or sessions of the peace for such town.

This Act not to extend to London, &c.

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## [ No. LVI. ] 1 Anne, st. 2. c. 13.—An Act for continuing former Acts for exporting Leather, and for Ease of Jurors, and for reviving and making more effectual an Act relating to Vagrants.

1 Anne, st. 2. c. 13.

'III. AND whereas divers persons within the county of *York*, liable to serve on juries at assizes and sessions of the peace (having very 'considerable estates in freehold and copyhold) do for their own ease 'prevail with the sheriffs to be returned and summoned to the service of 'the sessions, being nigh their habitations, and the attendance there 'short, which often necessitates men of meaner estates to be on juries at 'the assizes, than otherwise might and ought to be, where the con-'siderablest men of estates, liable to the said service, ought in their 'legal course to be returned, summoned, and to serve:' For remedy whereof, Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in Parliament assembled, That no person interested in such estate as will qualify him to serve on juries, of the clear yearly value of one hundred and fifty pounds, or of any greater yearly value, shall be returned and summoned to serve upon any jury, at any sessions of the peace holden for any part of the county of *York*, upon the penalty of twenty pounds, to be forfeited by any sheriff, under sheriff, or other officer whatsoever, making such return and summons as aforesaid, to be recovered to and for the use of any person that will sue for the same in any of the Courts of Record at *Westminster*, by action of debt, bill, plaint, information, or otherwise, wherein no essoign, protection, privilege, or wager of law, or more than one imparlance shall be allowed.

Persons in the county of York having an estate of 150*l. per ann.* &c. shall not be returned on juries at the sessions, &c.

No. LVII.
3 & 4 Anne, c. 18.
⁊D.

[ No. LVII. ] 3 and 4 Anne, c. 18.—An Act for making perpetual an Act for the more easy Recovery of small Tithes; and also an Act for the more easy obtaining Partition of Lands in Coparcenary, Joint Tenancy, and Tenancy in Common; and also for making more effectual and amending several Acts relating to the Return of Jurors.

4 and 5 William & Mary, c. 24.

'III. AND whereas in an Act made in the Session of Parliament held in the fourth and fifth years of the late King *William* and Queen *Mary*, intituled, "An Act for reviving, continuing, and explaining several laws therein mentioned, which are expired and near expiring," there are several good clauses and provisions relating to the returning of jurors, which clauses and provisions were by the said Act to continue in force for seven years after the first of *May* One thousand six hundred ninety-three, and to the end of the next Session of Parliament: And whereas the said clauses and provisions relating to the returning of jurors were, by an Act made in the seventh and eighth years of the late King *William* the Third, intituled, "An Act for the ease of jurors, and better regulating of juries," continued for seven years, from the first of *May* One thousand six hundred ninety and six, and from thence to the end of the next Session of Parliament, and no longer; which said last mentioned Act was also to continue but for the said term of seven years, from the first of *May* One thousand six hundred ninety and six, and to the end of the next Session of Parliament: And whereas the said Act made in the said Session of Parliament held in the seventh and eighth years of the late King *William* the Third, was by an Act made in the first year of the reign of her present Majesty, intituled, "An Act for continuing former Acts for exporting Leather, and for ease of Jurors, and for reviving and making more effectual an Act relating to Vagrants," continued for seven years from the expiration thereof, and to the end of the next Session of Parliament: And whereas the said clauses, provisions, and Act have not proved effectual, by reason of some defects in the said Act;' For remedy whereof be it enacted by the authority aforesaid, That if any sheriff of the said county of *York* shall, after the first day of *May* One thousand seven hundred and five, during the continuance of the said Act, refuse or neglect to provide and keep such book, or register, as in the said recited Act is directed; or shall refuse or neglect to enter therein the names of the persons who served as jurors in any the assizes or general quarter-sessions of the peace, to be held in or for the said county, or any the ridings therein, in or during the time he shall be sheriff of the said county, with the additions and places of abode, and time and places of such their services, in such manner as in and by the said recited Act is directed; or shall refuse or neglect, within ten days after the next succeeding sheriff of the said county shall be sworn into his office, to deliver over to such succeeding sheriff, as well all and every the books and registers that shall be made or prepared in the year wherein he shall have served sheriff, as also all such other books or registers as were prepared in the sheriffwick of any of his predecessors, sheriffs of the said county, within four years then next before, and which were delivered over to him by any of his said predecessors; or shall refuse or neglect to make and deliver, by himself or his under-sheriff, such certificate *gratis*, as in the said recited Act is mentioned, that then every such sheriff of the said county of *York*, so refusing or neglecting in all or any the said cases aforesaid, shall for every such offence forfeit the sum of one hundred pounds, one moiety whereof shall be to the use of her Majesty, her heirs or successors, and the other moiety to such person or persons as shall sue for the same, in any of her Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance shall be allowed.

7 & 8 W. 3. c. 32.

1 Annæ, stat. 2. c. 13.

Penalty on sheriff of York not keeping a register book of jurors' names.

No. LVII. 3 & 4 Anne, c. 18.

Or returning one person oftner than once in four years.

IV. And be it further enacted by the authority aforesaid, That if any such sheriff of the said county, for the time being, his or their under-sheriff, deputy, or bailiff, during the continuance of the said Act, shall knowingly summon or return any person or persons to serve on any jury or juries, at any the said assizes or sessions of the peace, who shall within four years before such summons or return, have served on any jury at any the said assizes or sessions held within the said county, or any the ridings therein, and shall not, upon producing of such certificate or certificates, as aforesaid, to the officer or person so summoning, or to the said sheriff, or his under-sheriff or deputy, discharge the said summons or return, and thereof give notice to the party summoned, six days before such assizes or sessions of the peace, at the which such person shall be summoned or returned to appear, that then the said sheriff, under-sheriff, bailiff, or person so summoning or refusing to discharge, as aforesaid, shall forfeit and lose to the party so summoned the sum of twenty pounds, to be recovered in manner and form as is last hereinbefore mentioned, together with his full costs of suit.

Penalty on constables not returning a list of persons fit for jurors.

'V. And whereas many constables, tythingmen, and headboroughs of 'towns, have refused or neglected to return, or give to the justices of 'the peace at the general quarter-sessions, a true list in writing of the 'names and places of abode of all persons within the respective places 'for which they serve, qualified to serve upon juries, as in and by the 'said Act made in the seventh and eighth years of the late King *William* 'it is enacted and provided; by reason of which neglect, the good intent 'of the said Act has been eluded, and great inconveniences have there-'upon ensued;' For remedy whereof be it further enacted by the authority aforesaid, That the justices of the peace for all counties or ridings, within the kingdom of *England*, or dominion of *Wales*, shall yearly and every year, during the continuance of the said Act, at the general quarter-sessions to be holden next after the four and twentieth day of *June*, issue forth their warrant or warrants, under the hands and seals of two or more of them, to the head or chief constable and constables of every hundred, lathe, or wapentake, requiring him or them to issue forth his or their precept or precepts to the respective constables, tythingmen, and headboroughs within his and their hundred, lathe, or wapentake, thereby directing and requiring them, and all and every of them, to convene and meet together with the said head constables of the hundred, lathe, or wapentake, within fourteen days next after the date of such receipt, at some usual or convenient place in the hundred, lathe, or wapentake, when and where the constables, tythingmen, and headboroughs, shall prepare and make a true list fair written and signed by them, of the names and places of abode of all the persons within the respective places for which they serve, qualified to serve on juries, according to the direction of the said Act made in the fourth and fifth years of King *William* and Queen *Mary*, with their titles and additions, between the age of one and twenty years and the age of seventy years, as by the said Act of the seventh and eighth years of the said King *William* is directed and appointed: Which list the said constable, tythingman, and headborough or their deputies, or some or one of them yearly, at the general quarter-sessions of the peace to be holden for each county, riding, or division, or any part thereof, in the week after the feast of Saint *Michael*, upon the first day of the said sessions, or upon the first day that the said sessions shall be held by adjournment at any other particular place or division, shall return and give to the justices of the peace in open court: And any head constable of the hundred, lathe, or wapentake, failing to issue forth his or their precept or precepts to convene and meet together, with the constables, tythingmen, and headboroughs, as aforesaid, shall forfeit and incur the penalty of ten pounds; and any constable, tythingman, and headborough, failing to meet the head constable of the hundred, lathe, or wapentake, pursuant to his precept, and failing to prepare and make a true list, and to return and give in the same to the justices in open court, as aforesaid, shall forfeit and incur the penalty of five pounds: And every such high constable,

'Continued by 9 Geo. I. c. 8. st. 2. for seven years.'

The constable, &c. subscribing the list before a justice is sufficient by 3 Geo. II. c. 25. s. 7.

'See 10 Anne, c. 14.'

No. LVII. 3 & 4 Anne, c. 18.

constable and tythingman, so offending, shall be prosecuted at the general assizes, sessions of *Oyer* and *Terminer*, and general gaol delivery, or sessions of the peace, before the justices thereof, who shall have power and authority to hear and determine the same.

The forementioned Acts to be read publicly every quarter-sessions after 24 June, yearly.

VI. And for the better observance of this Act, and of the said Acts made in the fourth and fifth years of King *William* and Queen *Mary*, and in the said seventh and eighth years of the late King *William*, the justices of the peace at the general quarter-sessions, held after the four and twentieth day of *June* yearly, shall cause the said several Acts to be publicly read in open court.

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## [ No. LVIII. ] 4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

4 Anne, c. 16.

'VI. AND whereas great delays do frequently happen in trials, by reason of challenges to the arrays of panels of jurors, and to 'the polls, for default of hundredors:' For prevention thereof for the future, be it enacted by the authority aforesaid, That from and after the said first day of *Trinity* term, every *venire facias* for the trial of any issue, in any action or suit in any of her Majesty's Courts of Record at *Westminster*, shall be awarded of the body of the proper county where such issue is triable.

*Venire facias* how to be awarded.

Not to extend to writs of appeal of felony, or murder, &c.

VII. Provided always, and be it enacted by the authority aforesaid, That nothing in this Act before contained shall extend to any writ, declaration, or suit of appeal of felony or murder, or to any indictment or presentment of treason, felony, or murder, or other matter, or to any process upon any of them, or to any writ, bill, action, or information upon any penal statute.

Where jurors are to view lands, &c. court may order special writs of *distringas* or *habeas corpora*.

VIII. And be it further enacted by the authority aforesaid, That from and after the said first day of *Trinity* term in any actions brought in any of her Majesty's Courts of Record at *Westminster*, where it shall appear to the Court in which such actions are depending, that it will be proper and necessary, that the jurors who are to try the issues in any such actions, should have the view of the messuages, lands, or place in question, in order to their better understanding the evidence that will be given upon the trials of such issues, in every such case the respective courts in which such actions shall be depending, may order special writs of *distringas* or *habeas corpora* to issue, by which the sheriff, or such other officer to whom the said writs shall be directed, shall be commanded to have six out of the first twelve of the jurors named in such writs, or some greater number of them, at the place in question, some convenient time before the trial, who then and there shall have the matters in question shewn to them by two persons in the said writs named, to be appointed by the court; and the said sheriff or other officer, who is to execute the said writs, shall, by a special return upon the same, certify that the view hath been had according to the command of the said writs.

[See the Act at length, Part II. Class I. No. 23.]

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## [ No. LIX. ] 10 Anne, c. 14.—An Act for the reviving and continuing several Acts therein mentioned, for the preventing Mischiefs which may happen by Fire; for building and repairing County Gaols; for exempting Apothecaries from serving Parish and Ward Offices, and serving upon Juries; and relating to the returning of Jurors.

[IV. 4 and 5 W. and M. c. 24. farther continued for seven years, by 9 Geo. I. c. 8. § 2.—7 and 8 W. III. c. 32.—1 Annæ, st. 2. c. 13.—3 and 4 Annæ, c. 18.—3 Geo. II. c. 25.—6 Geo. II. c. 37.]

No. LIX. 10 Anne, c. 14.

7 & 8 W. 3. c. 32. § 7. explained.

'V. AND whereas by the said Act made in the seventh and eighth years of the said King *William*, it is enacted, That from and 'after the four and twentieth day of *June*, One thousand six hundred 'ninety-six, no person shall be returned or summoned to serve upon any 'jury of the assizes, or general gaol delivery, to be holden for the 'county of *York*, or at any sessions of the peace to be holden for any 'part thereof, (the city of *York*, and county of the said city, and town 'and county of *Kingston upon Hull*, excepted) above once in four years, 'and some doubt having arisen on what is to be understood by any ses-'sions of the peace to be holden for any part thereof;' therefore for explaining the same words, and avoiding any dispute that may hereafter be made touching the construction thereof; Be it enacted and declared, That the same shall be construed to extend, not only to any sessions of the peace to be holden for any of the ridings within the said county of *York*, but also to any sessions of the peace that shall be holden by adjournment for any part of the said ridings, or any of them.

Not to extend to exempt any persons from serving as jurors at the assizes for the said county.

VI. Provided nevertheless, That if any person interested in such estate, as will qualify him to serve on juries, of the clear yearly value of one hundred and fifty pounds, or of any greater yearly value, shall serve as a juror at any of the said sessions or adjournments, he shall not thereby be exempted from serving as a juror at the assizes or general gaol delivery to be holden for the said county of *York*, for the said term of four years, or any other term; any thing in the said recited Acts, or any of them, or in this present Act, contained to the contrary thereof in any wise notwithstanding.

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## [ No. LX. ] 12 George I. c. 31.—An Act for the better Regulating Trials by *Nisi Prius* in the County of *Middlesex*.

12 George I. c. 31. 18 Eliz. c. 12.

'WHEREAS in and by an Act of Parliament made in the eighteenth 'year of the reign of Queen *Elizabeth*, intituled, "An Act for 'Trial of *Nisi Prius* in the County of *Middlesex*," power is respectively 'given to the Chief Justice of the *King's Bench*, the Chief Justice of the 'Common Pleas, and the Chief Baron of the Court of *Exchequer* for the 'time being, and in the absence or default of any of them, to two other 'judges or barons of the same several courts, where it shall happen either 'of the same chief justices, or chief baron for the time being, to be 'absent, to try issues as justices of *nisi prius* for the said county of '*Middlesex* within the term-time, or within four days next after the end 'of any term; and whereas the restraining the time for such trials, after 'the term, to four days, hath frequently occasioned delay of justice, and 'the requiring the presence of two judges or barons, in the absence of 'any of them the said chief justices or chief baron, is found by expe-'rience to be very inconvenient;' For remedy thereof, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same, That from and after the first day of *Easter* term, in the year of our Lord One thousand seven hundred and twenty-six, it shall and may be lawful to and for the Chief Justice of the *King's Bench*, the Chief Justice of the *Common Pleas*, and the Chief Baron of the Court of *Exchequer* for the time being, and every of them respectively, and in the absence or default of any of them, to and for any other judge or baron of the said several courts, where it shall happen either of the said chief justices, or the chief baron for the time being, to be absent, as justices of *nisi prius* for the said county of *Middlesex*, within the term or within the space of eight days after the end of any term respectively, to try all such issues, as by the said Act they or any of them are enabled to try, in such place and manner, and with and under such powers, authorities and provisions, as in and by the said recited Act, or any other Act of Parliament or law whatsoever concern-

The chief justices or chief baron, and in their absence, any other judge or baron in term, or within eight days after, may try issues at *nisi prius*.

No. LX. 12 George I. c. 31.

ing the premises, are prescribed and contained; any thing in the said recited Act to the contrary hereof in any wise notwithstanding.

Sheriffs, &c. are to give attendance, &c. as by 18 Eliz. provided.

II And be it further enacted by the authority aforesaid, That all sheriffs, officers, ministers, parties, witnesses, jurors, and other persons whatsoever, who by the said recited Act were required to give attendance upon the said chief justices and chief baron, or other judges and barons, or to make return of process, or do or execute any other matters or things whatsoever, relating to trials to be had by virtue of the said recited Act, shall be charged and obliged respectively to give their attendance, make return of process, and do and execute all other matters and things whatsoever relating to any trials to be had by virtue of this Act, in the like manner, and under the like penalties and forfeitures as in or by the said recited Act are expressed or provided, as fully and effectually to all intents and purposes, as if the same and every of them had been repeated and inserted in this present Act.

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## [ No. LXI. ] 3 George II. c. 25.—An Act for the better regulation of Juries.

3 Geo. II. c. 25.

'WHEREAS many evil practices have been used in corrupting of 'jurors returned for the trial of issues joined to be tried before 'the justices of assize or *nisi prius*, and the judges of the great sessions 'in *Wales*, and the judge or judges of the sessions for the counties 'palatine of *Lancaster*, *Chester*, or *Durham*, and many neglects and 'abuses have happened in making up the lists of freeholders who ought 'to serve on such trials, and many persons being lawfully summoned 'to serve on juries have neglected to appear, to the great injury of 'many persons in their properties and estates;' In order to prevent the like practices, neglects and abuses, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *September*, One thousand seven hundred and thirty, the person or persons required by a statute made in the seventh and eighth years of the reign of his late Majesty King *William* the Third, intituled "An Act for the Ease of Jurors, and better regulating of Juries," and by a clause in another Act made in the third and fourth years of the reign of the late Queen *Anne*, intituled "An Act for making perpetual an Act for the more easy recovery of small Tithes; and also an Act for the more easy obtaining Partition of Lands in Coparcenary, joint Tenancy, and Tenancy in Common; and also for making more effectual and amending several Acts relating to the Return of Jurors," to give in, or who are by virtue of this Act to make up, true lists in writing of the names of persons qualified to serve on juries, in order to assist them to complete such lists, pursuant to the intent of the said Act, shall (upon request by him or them made to any parish-officer or officers who shall have in his or their custody any of the rates for the poor or land-tax in such parish or place) have free liberty to inspect such rates, and take from thence the name or names of such freeholders, copyholders, or other persons qualified to serve on juries, dwelling within their respective parishes or precincts for which such list is to be given in and returned pursuant to the said Acts; and shall yearly and every year, twenty days at least before the Feast of Saint *Michael* the Archangel, upon two or more *Sundays* fix upon the door of the church, chapel, and every other public place of religious worship within their respective precincts, a true and exact list of all such persons intended to be returned to the quarter sessions of the peace, as qualified to serve on juries, pursuant to the directions of the said Act, and leave at the same time a duplicate of such list with a churchwarden, chapelwarden, or overseer of the poor of the said parish or place, to be perused by the parishioners without fee or reward, to the end that notice may be given of persons so qualified who are omitted, or of persons

List of jurors qualified according to the Act 7 & 8 W. III. c. 32. and 3 & 4 Ann. c. 18.

to be made from the rates in each parish,

and yearly fixed upon church doors.

No. LXI.
3 George II.
c. 25.

inserted by mistake who ought to be omitted out of such lists; and if any person or persons, not being qualified to serve on juries, shall find his or their name or names mentioned in such list, and the person or persons required to make such list shall refuse to omit him or them, or think it doubtful whether he or they ought to be omitted, it shall and may be lawful to and for the justices of the peace for the county, riding, or division at their respective general quarter sessions, to which the said lists shall be so returned, upon satisfaction from the oath of the party complaining, or other proof, that he is not qualified to serve on juries, to order his or their name or names to be struck out or omitted in such list, when the same shall be entered in the book to be kept by the clerk of the peace for that purpose, pursuant to the said Act.

Persons not qualified may be relieved at the quarter sessions.

II. And be it further enacted, That if any person or persons required by the said Acts to return or give in, or by virtue of this Act to make up any such list, or concerned therein, shall wilfully omit out of any such list any person or persons whose name or names ought to be inserted, or shall wilfully insert any person or persons who ought to be omitted, or shall take any money or other reward for omitting or inserting any person whatsoever, he or they so offending shall, for every person so omitted or inserted in such list, contrary to the meaning of this Act, forfeit the sum of twenty shillings for every such offence, upon conviction before one or more justice or justices of the peace of the county, riding or division where such offender shall dwell, upon the confession of the offender, or proof by one or more credible witness or witnesses on oath; one half thereof to be paid to the informer, and the other half to the poor of such parish or place for which the said list is returned; and in case such penalty shall not be paid within five days after such conviction, the same shall be levied by distress and sale of the offender's goods by warrant or warrants from one or more justice or justices of the peace, returning the overplus, if any there be; and the said justice or justices, before whom such person shall be convicted of such offence, shall, in writing under their hands, certify the same to the justices at their next general quarter sessions which shall be held for the county in which the person or persons so omitted or inserted shall dwell, which justices shall direct the clerk of the peace for the time being to insert or strike out the name or names of such person or persons as shall by such certificate appear to have been omitted or inserted in such lists, contrary to the meaning of this Act; and duplicates of the said lists, when delivered in at the quarter sessions of the peace, and entered in such book to be kept by the clerk of the peace for that purpose, shall, during the continuance of such quarter sessions, or within ten days after, be delivered or transmitted by the clerk of the peace to the sheriff of each respective county, or his under-sheriff, in order for his returning of juries out of the said lists; and such sheriff or under-sheriff shall immediately take care that the names of the persons contained in such duplicates shall be faithfully entered alphabetically, with their additions and places of abode in some book or books to be kept by him or them for that purpose; and that every clerk of the peace neglecting his duty therein shall forfeit the sum of twenty pounds to such person or persons as shall inform or prosecute for the same, until the party be thereof convicted upon an indictment before the justices of the peace at any general quarter sessions of the peace to be holden for the same county, riding, division or precinct.

Wilfully omitting or inserting wrong persons, forfeits 20*s*.

Duplicates of the lists to be transmitted to the sheriff.

III. And be it further enacted, That in case any sheriff, under-sheriff, bailiff or other officer to whom the return of juries shall belong, shall summon and return any person or persons to serve on any jury in any cause to be tried before the justices of assise or *nisi prius*, or judges of the said great sessions, or the judge or judges of the sessions for the said counties palatine, whose name is not inserted in the duplicates so delivered or transmitted to him or them by such clerk of the peace, if any such duplicate shall be delivered or transmitted, or if any clerk of assize, judge's associate or other officer, shall record the appearance of any person so summoned and returned as aforesaid, who did not really

Penalty on sheriff, &c. returning any person whose name is not in the duplicate.

Clerk of assize recording appearances when the party did not appear, to be fined.

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and truly appear, then and in such case any judge or justice of assize or *nisi prius*, or judge or judges of the said great sessions, or the judge or judges of the sessions for the said counties palatine, shall and may, upon examination in a summary way, set such fine or fines upon such sheriff or under-sheriff, clerk of the assize, judge's associate or other officer, for every such person so summoned and returned as aforesaid, and for every person whose appearance shall be so falsely recorded, as the said judge or justice of assize, *nisi prius*, or of the said great sessions, or the judge or judges of the sessions for the said counties palatine shall think meet, not exceeding ten pounds, and not less than forty shillings.

Justices of assize, &c. may fine sheriff, &c. for returning jurors irregularly.

IV. And for preventing abuses by sheriffs, under-sheriffs, bailiffs or other officers concerned in the summoning or returning of jurors: Be it enacted by the authority aforesaid, That no persons shall be returned as jurors to serve on trials at any assizes or *nisi prius*, or at the said great sessions, or at the sessions for the said counties palatine, who have served within the space of one year before in the county of *Rutland*, or four years in the county of *York*, or of two years before in any other county, not being a county of a city or town; and if any such sheriff shall wilfully transgress therein, any judge or justice of assize or *nisi prius*, or of the said great sessions, or the judge or judges of the sessions for the said counties palatine, may and is hereby required on examination and proof of such offence, in a summary way, to set a fine or fines upon every such offender as he shall think meet, not exceeding five pounds for any one offence.

Sheriff, &c., to enter the names of those who have served:

and give certificates.

V. And be it further enacted, That the sheriff, under-sheriff, or other officer to whom the return of juries shall belong, shall from time to time enter or register in a book to be kept for that purpose the names of such persons as shall be summoned, and shall serve as jurors on trials at any assizes or *nisi prius*, or in the said courts of great sessions, or sessions for the said counties palatine, together with their additions and places of abode alphabetically, and also the times of their services; and every person so summoned and attending or serving as aforesaid shall (upon application by him made to such sheriff, under-sheriff, or other officer) have a certificate testifying such his attendance or service done, which certificate the said sheriff, under-sheriff, or other officer, is hereby directed and required to give without fee or reward; and the said book shall be transmitted by such sheriff, under-sheriff or other officer, to his or their successor or successors, from time to time.

No money to be taken to excuse persons from reserving.

VI. And be it further enacted, That no sheriff, under-sheriff, bailiff, or other officer or person whatsoever, shall directly or indirectly take or receive any money or other reward to excuse any person from serving or being summoned to serve on juries, or under that colour or pretence, and that no bailiff or other officer appointed by any sheriff or under-sheriff to summon juries, shall summon any person to serve thereon other than such whose name is specified in a mandate signed by such sheriff or under-sheriff, and directed to such bailiff or other officer; and if any sheriff, under-sheriff, bailiff or other officer shall wilfully transgress in any the cases aforesaid, any judge or justice of assize, *nisi prius* or great sessions aforesaid, or the judge or judges of the sessions for the said counties palatine, may and is hereby required, on examination and proof of such offence, in a summary way, to set a fine or fines upon any person or persons so offending as he shall think meet, not exceeding ten pounds, according to the nature of the offence.

Penalty.

'VII. And whereas by the said Act of the seventh and eighth years of 'the reign of his late Majesty King *William* the Third, and also by 'another Act made in the third and fourth years of the reign of her 'late Majesty Queen *Anne*, all constables, tithingmen and headbo-'roughs are obliged to give in true lists at the respective general quarter 'sessions of the peace holden for each county, riding or division, of the 'names and places of all persons within their respective precincts or 'places qualified to serve on juries, to the justices of the peace in open 'court, which hath by experience been found inconvenient and expen-'sive to several constables, tithingmen and headboroughs, such quarter

'sessions being often held at a great distance from their abode:' For remedy whereof, be it enacted by the authority aforesaid, That from and after the said first day of *September* One thousand seven hundred and thirty, it shall be lawful and sufficient for all or any constables, tithingmen or headboroughs, after they shall have made and completed such lists of persons qualified to serve on juries for their respective parishes or precincts, according to the manner directed by the before-mentioned Acts and this present Act, to subscribe the same in the presence of one or more justice or justices of the peace for each respective county or place, and also at the same time to attest the truth of such lists upon oath to the best of their knowledge or belief, which oath such justice or justices respectively are hereby empowered and required to administer; and the said lists shall (being first signed by the said justices respectively, before whom the same shall be attested on oath, and subscribed as aforesaid) be delivered by the said constables, tithingmen or headboroughs to the chief or high constables of the hundreds or divisions whereunto the same shall respectively belong, who are hereby directed and required to deliver in such lists to the justices of the peace for the county, riding or division, at their respective general quarter sessions in open court, attesting at the same time upon oath their receipt of such lists from the constables, tithingmen or headboroughs respectively, and that no alteration hath been therein made since their receipt thereof; and the said lists, so delivered in and attested, shall be deemed as effectual as if they had been delivered in by the constables, tithingmen or headboroughs for their respective parishes or precincts.

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Constables, &c. to subscribe their lists before justices, on oath, &c.

VIII. And be it further enacted by the authority aforesaid, That from and after the twenty-fifth day of *December*, One thousand seven hundred and thirty, every sheriff or other officer to whom the return of the *venire facias juratores*, or other process for the trial of causes before justices of assize or *nisi prius* in any county in *England*, doth or shall belong, shall, upon his return of every such writ of *venire facias*, (unless in causes intended to be tried at bar, or in cases where a special jury shall be struck by order or rule of court) annex a panel to the said writ, containing the Christian and surnames, additions and places of abode of a competent number of jurors named in such lists as qualified to serve on juries, the names of the same persons to be inserted in the panel annexed to every *venire facias*, for the trial of all issues at the same assizes in each respective county; which number of jurors shall be not less than forty-eight in any county, nor more than seventy-two, without direction of the judges appointed to go the circuit, and sit as judges of assize or *nisi prius* in such county, or one of them, who are hereby respectively empowered and required, if he or they see cause, by order under his or their respective hand or hands, to direct a greater or lesser number, and then such number as shall be so directed shall be the number to serve on such jury; and that the writs of *habeas corpora juratorum*, or *distringas*, subsequent to such writ of *venire facias juratores*, need not have inserted in the bodies of such respective writs the names of all the persons contained in such panel, but it shall be sufficient to insert in the mandatory part of such writs respectively, *corpora separalium personarum in panello huic brevi annexo nominatarum*, or words of the like import, and to annex to such writs respectively panels containing the same names as were returned in the panel to such *venire facias*, with their additions and places of abode, that the parties concerned in any such trials may have timely notice of the jurors who are to serve at the next assizes in order to make their challenges to them, if there be cause; and that for the making the returns and panels aforesaid, and annexing the same to the respective writs, no other fee or fees shall be taken than what are now allowed by law to be taken for the return of the like writs and panels annexed to the same; and that the persons named in such panels shall be summoned to serve on juries at the then next assizes or sessions of *nisi prius* for the respective counties to be named in such writs, and no other.

Sheriff, &c. on return of writs of *venire facias* to annex a panel of jurors, &c.

IX. And be it further enacted, That every sheriff or other officer to

Return of jurors in Wales;

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whom the return of juries for the trial of causes in the Court of Grand Sessions in any county of *Wales* do or shall belong, shall, at least eight days before every grand sessions, summon a competent number of persons qualified to serve on juries, out of every hundred and commote within every such county, so as such number be not less than ten, or more than fifteen, without the directions of the judge or judges of the grand sessions held for such county, who is and are hereby empowered, if he or they shall see cause, by rule or order of court, to direct a greater or lesser number to be summoned out of every such hundred and commote respectively; and that the said officer and officers who shall summon such person, shall return a list containing the Christian and surnames, additions and places of abode of the persons so summoned to serve on juries, the first court of the second day of every grand sessions; and that the persons so summoned, or a competent number of them, as the judge or judges of such grand sessions shall direct, and no other, shall be named in every panel to be annexed to every writ of *venire facias juratores*, *habeas corpora juratorum*, and *distringas*, that shall be issued out and returnable for the trial of causes in such grand sessions.

and counties palatine of Chester, Lancaster and Durham.

X. And be it further enacted by the authority aforesaid, That every sheriff or other officer to whom the return of the *venire facias juratores* or other process for the trial of causes before the justices of the courts, or sessions to be held for the counties palatine of *Chester*, *Lancaster*, or *Durham* doth belong, shall, fourteen days at the least before the said courts or sessions shall respectively be held, summon a competent number of persons qualified to serve on juries, so as such number be not less than forty-eight, nor more than seventy-two, without the direction of the judge or judges of the courts or sessions to be held for such counties palatine respectively, and shall, eight days at the least before such courts or sessions shall respectively be held, make or cause a list to be made of the persons so summoned to serve on juries, containing their Christian and surnames, additions and places of abode; and the list so made shall forthwith be publicly hung up in the sheriff's office, to be inspected and read by any person or persons whatsoever; and that the persons named in such list, and no other, shall be summoned to serve on juries at the next courts or sessions to be held for the said respective counties palatine; and the said sheriff or other officer is hereby required to return such list on the first day of the court or sessions to be held for the said counties palatine respectively; and the persons so summoned, or a competent number of them, as the judge or judges of such courts or sessions respectively shall direct, and no other, shall be named in every panel to be annexed to every writ of *venire facias juratores*, *habeas corpora juratorum*, and *distringas*, that shall be issued out and returnable for the trial of causes in such courts or sessions respectively.

Names of persons impanelled to be written, and delivered to the marshal of the assize, and put in a box to be drawn, &c.

XI. And be it further enacted by the authority aforesaid, That the name of each and every person who shall be summoned and impanelled as aforesaid, with his addition, and the place of his abode, shall be written in several and distinct pieces of parchment or paper, being all, as near as may be, of equal size and bigness, and shall be delivered unto the marshal of such judge of assize or *nisi prius*, or of the said great sessions, or of the sessions for the said counties palatine, who is to try the causes in the said county, by the under-sheriff of the said county, or some agent of his; and shall by direction and care of such marshal be rolled up all as near as may be, in the same manner, and put together in a box or glass to be provided for that purpose; and when any cause shall be brought on to be tried, some indifferent person, by direction of the court, may and shall in open court draw out twelve of the said parchments or papers, one after another; and if any of the persons whose names shall be so drawn, shall not appear, or be challenged and set aside, then such further number, until twelve persons be drawn who shall appear, and after all causes of challenge shall be allowed as fair and indifferent; and the said twelve persons so first drawn and

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appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the said cause; and the names of the persons so drawn and sworn shall be kept apart by themselves in some other box or glass to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until the jury shall, by consent of the parties or leave of the court, be discharged; and then the same names shall be rolled up again and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn, and so *toties quoties*, as long as any cause remains then to be tried.

Where the jury have not brought in their verdict, twelve others to be drawn.

XII. Provided always, That if any cause shall be brought on to be tried in any of the said courts respectively, before the jury in any other cause shall have brought in their verdict, or be discharged, it shall and may be lawful for the court to order twelve of the residue of the said parchments or papers, not containing the names of any of the jurors who shall not have so brought in their verdict, or be discharged, to be drawn in such manner as is aforesaid, for the trial of the cause which shall be so brought on to be tried.

Penalty on defaulters.

XIII. And be it further enacted, That every person or persons, whose name or names shall be so drawn as aforesaid, and who shall not appear after being openly called three times, upon oath made by some credible person, that such person so making default had been lawfully summoned, shall forfeit and pay for every default in not appearing upon call as aforesaid (unless some reasonable cause of his absence be proved by oath or affidavit, to the satisfaction of the judge who sits to try the said cause) such fine or fines not exceeding the sum of five pounds, and not less than forty shillings, as the said judge shall think reasonable to inflict or assess for such default.

Method in case of view.

XIV. Provided always, That where a view shall be allowed in any cause, that in such case six of the jurors named in such panel, or more, who shall be mutually consented to by the parties or their agents on both sides, or, if they cannot agree, shall be named by the proper officer of the respective courts of King's Bench, Common Pleas, Exchequer at *Westminster*, or the grand session in *Wales*, and the said counties palatine, for the causes in their respective courts, or, if need be, by a judge of the respective courts where the cause is depending, or by the judge or judges before whom the cause shall be brought on to trial respectively, shall have the view, and shall be first sworn, or such of them as appear, upon the jury to try the said cause, before any drawing as aforesaid, and so many only shall be drawn to be added to the viewers who appear, as shall, after all defaulters and challenges allowed, make up the number of twelve to be sworn for the trial of such cause.

In trials of issues at Westminster, on motion of parties, judges may order a special jury.

'XV. And whereas some doubt hath been conceived touching the 'power of his Majesty's courts of law at *Westminster*, to appoint juries 'to be struck before the Clerk of the Crown, Master of the Office, pro-'thonotaries, or other proper officer of such respective courts, for the 'trial of issues depending in the said courts, without the consent of 'the prosecutor, or parties concerned in the prosecution or suit then 'depending, unless such issues are to be tried at the bar of the same 'courts:' Be it declared and enacted by the authority aforesaid, That it shall and may be lawful to and for His Majesty's Courts of King's Bench, Common Pleas, and Exchequer at *Westminster* respectively, upon motion made on behalf of His Majesty, his heirs or successors, or on the motion of any prosecutor or defendant in any indictment or information for any misdemeanor, or information in the nature of a *quo warranto*, depending or to be brought or prosecuted in the said Court of King's Bench, or in any information depending or to be brought or prosecuted in the said Court of Exchequer, or on the motion of any plaintiff or plaintiffs, defendant or defendants in any action, cause or suit whatsoever, depending or to be brought and carried on in the said Courts of King's Bench, Common Pleas, and Exchequer, or in any of them, and the said courts

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are hereby respectively authorized and required, upon motion as aforesaid, in any of the cases before mentioned, to order and appoint a jury to be struck before the proper officer of each respective court, for the trial of any issue joined in any of the said cases, and triable by a jury of twelve men in such manner as special juries have been, and are usually struck in such courts respectively, upon trials at bar had in the said courts, which said jury so struck as aforesaid, (1) shall be the jury returned for the trial of the said issue.

Persons applying for such jury, to pay the fees, 24 Geo. 2. c. 18.

XVI. And it is hereby further enacted, That the person or party who shall apply for such jury to be struck as aforesaid, shall bear and pay the fees for the striking such jury, and shall not have any allowance for the same, upon taxation of costs.

Where special juries in cities are appointed, the jury to be taken out of lists of persons qualified.

XVII. Provided always, and it is hereby further enacted, That where any special jury shall be ordered by rule of any of the said courts to be struck by the proper officer of such court, in the manner aforesaid, in any cause arising in any city, or county of a city or town, the sheriff or sheriffs, or under-sheriff of such city, or county of a city or town, shall be ordered by such rule to bring, or cause to be brought before the said officer, the books or lists of persons qualified to serve on juries within the same, out of which juries ought to be returned by such sheriff or sheriffs, in like manner as the freeholders' book hath been usually ordered to be brought, in order to the striking of juries for trials at the bar, in causes arising in counties at large, and in every such case the jury shall be taken and struck out of such books or lists respectively.

Who are qualified to be inserted in the lists.

XVIII. And be it enacted by the authority aforesaid, That any person or persons having an estate in possession in land in their own right, of the yearly value of twenty pounds or upwards, over and above the reserved rent payable thereout, such lands being held by lease or leases for the absolute term of five hundred years or more, or for ninety-nine years or any other term determinable on one or more life or lives, the names of every such person or persons shall and may, and are hereby directed and required to be inserted in the respective lists as aforesaid, in order to their being inserted in the freeholder's book; and the persons appointed to make such lists are hereby directed to insert them accordingly; and such leaseholder or leaseholders shall and may be summoned or impanelled to serve on juries, in like manner as freeholders may be summoned and impanelled by virtue of this or any other Act or Acts of Parliament for that purpose, and be subject to the like penalties for non-appearance; any law, statute, use or custom to the contrary notwithstanding.

XIX. And be it further enacted by the authority aforesaid, That the sheriffs of the city of *London* for the time being, shall not impanel or return any person or persons to try any issue joined in any of his Majesty's Courts of King's Bench, Common Pleas, and Exchequer, or to be or serve on any jury at the sessions of *Oyer* and *Terminer*, gaol delivery or sessions of the peace, to be had or held for the said city of *London*, who shall not be an householder within the said city, and have lands, tenements or personal estate, to the value of one hundred pounds; and the same matter and cause alleged by way of challenge, and so found, shall be taken and admitted as a principal challenge, and the person or persons so challenged, shall and may be examined on oath of the truth of the said matter.

Return of juries in capital cases.

XX. And be it further enacted by the authority aforesaid, That the sheriffs or other officers to whom the returning of juries doth or shall belong, for any county, city or place respectively, shall not impanel or return any person or persons to serve on any jury for the trial of any capital offence, who at the time of such return would not be qualified in such respective county, city or place, to serve as jurors in civil

(1) If, after a special jury has been struck, the cause goes off for default of jurors, no new jury can be struck; but the cause must be tried by the jury first appointed; Rex v. Perry, 5 T. R. 453.

causes for that purpose; and the same matter and cause alleged by way of challenge, and so found, shall be admitted and taken as a principal challenge, and the person or persons so challenged, shall and may be examined on oath of the truth of the said matter.

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XXI. And be it enacted, That this Act shall be openly read once in every year at the general quarter sessions to be holden for every county, city or place, within that part of *Great Britain* called *England* and *Wales*, next after the twenty-fourth day of *June*.

This Act to be read at every quarter sessions.

XXII. And be it further enacted by the authority aforesaid, That this Act shall continue and be in force until the first day of *September*, One thousand seven hundred and thirty-three, and from thence to the end of the then next session of Parliament, and no longer.

Continuation, made perpetual by 6 Geo. 2. c. 37.

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## [ No. LXII. ] 4 George II. c. 7.—An Act to explain and amend an Act made in the third Year of his Majesty's Reign, intituled, "An Act for the better Regulation of Juries," so far as the same relates to the county of *Middlesex*.

'WHEREAS by an Act of Parliament made in the third year of his 'Majesty's reign, intituled, "An Act for the better regulation of 'juries," it is among other things enacted, That no persons shall be 'returned as jurors to serve on trials at any assizes or *Nisi Prius*, or at 'the Great Sessions in *Wales*, or at the sessions for the counties palatine of *Lancaster*, *Chester* and *Durham*, who have served within the 'space of one year before in the county of *Rutland*, or four years in 'the county of *York*, or of two years before in any other county, not 'being a county of a city or town: And if any such sheriff shall wilfully transgress therein, any judge or justice of assize, or *Nisi Prius*, 'or of the said Great Sessions, or the judge or judges of the sessions 'for the said counties palatine, may, and is hereby required, on examination and proof of such offence in a summary way, to set a fine or 'fines upon every such offender, as he shall think meet, not exceeding 'five pounds for any one offence: And whereas by reason of the frequent sessions of *Nisi Prius* in the Court of King's Bench, Common 'Pleas and Exchequer at *Westminster*, the said provision cannot be put 'in execution in the county of *Middlesex*, but is found to be impracticable:' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *May*, in the year of our Lord One thousand seven hundred and thirty-one, the said recited clause or any part thereof shall not extend or be construed to extend to the said county of *Middlesex*.

4 George II. c. 7.

3 Geo. 2. c. 25.

Clauses in the Jury Act not to extend to Middlesex.

II. Provided always, and be it enacted by the authority aforesaid, That no person shall be returned to serve as a juror at any session of *Nisi Prius*, in the county of *Middlesex*, who has been returned to serve as a juror at any such session of *Nisi Prius* in the said county, in the two terms or vacations next immediately preceding, under such penalty upon the sheriff, under-sheriff, bailiff or other officer employed or concerned in the summoning or returning of jurors in the said county of *Middlesex*, as might have been inflicted upon them or any of them for any offence against the said recited clause.

None to be returned, who has been returned in the two terms preceding. Made perpetual by 6 G. 2. c. 37.

III. And whereas by the very frequent occasions there are for juries in the county of *Middlesex*, and by the small number of freeholders that are in the said county, the sheriffs of the said county may be under difficulties in procuring juries to answer the purposes of this Act; for remedy whereof be it enacted by the authority aforesaid, That all leaseholders upon leases where the improved rents or value shall amount to fifty pounds or upwards *per annum*, over and above all ground rents or other reservations payable by virtue of the said leases, shall be liable

Leaseholders, where the improved rents amount to 50*l.* per annum, liable to serve on juries.

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and obliged to serve upon juries when they shall be legally summoned for that purpose; any thing in this or any former Act to the contrary notwithstanding.

[ No. LXIII. ] 6 George II. c. 37.—An Act for making perpetual the several Acts therein mentioned, for the better Regulation of Juries; and for empowering the Justices of Session or Assizes for the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, to appoint a Special Jury in manner therein mentioned; and for * * * * * * * *

6 George II. c. 37.

'WHEREAS the laws hereinafter mentioned, which have by experience been found useful and beneficial, are expired or near expiring;' May it therefore please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That an Act made in the third year of the reign of his present Majesty, intituled, "An Act for the better Regulation of Juries," and also one other Act made in the fourth year of the reign of his said present Majesty, intituled, "An Act to explain and amend an Act made in the third year of his Majesty's reign, intituled, 'An Act for the better Regulation of Juries, so far as the same relates to the county of *Middlesex*,'" which said Acts are temporary and are near expiring, shall be and are hereby made perpetual.

The Acts 3 G. 2. c. 25. & 4 G. 2. c. 7. for regulating juries, made perpetual.

II. And be it enacted by the authority aforesaid, That the justices of the session or assizes for the counties palatine of *Chester*, *Lancaster*, and *Durham*, upon motion made on behalf of his Majesty, his heirs or successors, or on motion of any prosecutor or defendant in any indictment or information for any misdemeanor, or on the motion of any plaintiff or plaintiffs, defendant or defendants, in any action, cause or suit whatsoever, depending (1) or to be brought and carried on in the courts of session or assize of the said counties palatine of *Chester*, *Lancaster*, and *Durham*, or in any of them, shall and may, in case such justices in their discretion shall think fit, order and appoint a jury to be struck before the proper officer of each court respectively, for the trial of any issue joined in any of the said cases, *in such manner as special juries have been usually struck in the courts of law at* Westminster, upon trials at bar had in the said courts, which jury so struck as aforesaid, shall be the jury returned for the trial of such issue as aforesaid.

In what manner justices of sessions or assize for Chester, Lancaster and Durham, may appoint special juries.

[For further part see *infra*.]

[ No. LXIV. ] 24 George II. c. 18.—An Act for the better Regulation of Trials by Jury; and for enlarging the Time for Trials by *Nisi Prius* in the county of *Middlesex*.

24 George II. c. 18.

3 Geo. 2. c. 25.

'WHEREAS by an Act made in the third year of the reign of his present Majesty, intituled, "An Act for the better Regulation of juries," it is amongst other things enacted, That the person or party who shall apply for a special jury to be struck in the manner therein mentioned, shall bear and pay the fees for the striking such

(1) In Cheshire it is the usual practice for the judges of the county palatine, under the authority of this Act, to direct a trial by special jury in cases coming by mittimus from the courts at Westminster. A question respecting the regularity of this practice was incidentally mentioned in Massey v. Johnson, 12 East, 69, which was decided upon other grounds; the irregularity, if any, being held to be waved. A similar practice has not been adopted in the other counties palatine.

No. LXIV. 24 Geo. II. c. 18.

'jury, and shall not have any allowance for the same upon taxation of 'costs: And whereas the said clause doth extend only to the fees paid 'for striking such special jury; by reason whereof special juries have 'frequently been applied for in small and trivial causes, in order to 'burden the other party with the expense thereof; which practice has 'been found to be very inconvenient and oppressive: And whereas one 'other Act was made in the sixth year of the reign of his present Ma-'jesty, intituled, "An Act for making perpetual the several Acts 'therein mentioned, for the better Regulation of Juries; and for 'empowering the justices of session or assizes for the counties palatine 'of *Chester*, *Lancaster*, and *Durham*, to appoint a special jury in man-'ner therein mentioned; and for continuing the Act for regulating the 'manufacture of cloth in the West Riding of the county of *York* '(except a clause therein contained;) and for continuing an Act for the 'more effectual punishing wicked and evil-disposed persons going 'armed in disguise, and for other purposes therein mentioned, and to 'prevent the cutting or breaking down the bank of any river, or any 'sea bank; and to prevent the malicious cutting of hop-binds; and for 'continuing an Act made in the thirteenth and fourteenth years of the 'reign of King *Charles* the Second, for preventing theft and rapine upon 'the northern borders of *England*; and for reviving and continuing cer-'tain clauses in two other Acts made for the same purpose;" whereby it is 'amongst other things enacted, That the said Act for the better Regula-'tion of Juries should be, and was thereby made perpetual; and it was 'thereby also enacted, That the justices of the session or assizes for the 'counties palatine of *Chester*, *Lancaster*, and *Durham*, should and might, 'upon motion, order and appoint a jury to be struck before the proper 'officer of each court respectively, for the trial of any issue in any of the 'cases, and in such manner as are therein mentioned;' For remedy thereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *Easter* term, which shall be in the year of our Lord One thousand seven hundred and fifty-one, the person or party who shall by virtue of either of the said Acts apply for such special jury, shall not only bear and pay the fees for striking such jury, but shall also pay and discharge all the expenses occasioned by the trial of the cause by such special jury, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury, unless the judge before whom the cause is tried shall, immediately after the trial, certify in open court under his hand upon the back of the record, that the same was a cause proper to be tried by a special jury.

6 Geo. 2. c. 37.

Persons applying for special juries to pay the expenses of striking the same, and the charges occasioned by the trial, &c.

'II. And whereas complaints are frequently made of the great and 'extravagant fees paid to jurymen returned under the authority of the 'said recited Acts;' Be it enacted by the authority aforesaid, That no person who shall, after the said first day of *Easter* Term, serve upon any jury appointed or returned by authority of any of the said Acts, shall be allowed or take for serving on any such jury more than the sum of money which the judge who tries the issue or issues shall think just and reasonable, not exceeding the sum of one pound one shilling, except in causes wherein a view hath been or shall be directed.

Fees allowed to jurymen.

'III. And whereas by an Act passed in the fourth year of the reign 'of her late Majesty Queen *Anne*, intituled, "An Act for the Amend-'ment of the Law, and the better Advancement of Justice," it is 'enacted, That from and after the first day of *Trinity* Term, One 'thousand seven hundred and six, every *venire facias* for the trial of 'any issue, in any action or suit in any of her Majesty's Courts of Re-'cord at *Westminster*, shall be awarded of the body of the proper 'county where such issue is triable; but in the said Act there is con-'tained a proviso, that the same shall not extend to any action or in-

4 Annæ, c. 16.

No. LXIV. 24 Geo. II. c. 18.

Venire facias upon a penal statute, to be awarded of the body of the county.

'formation upon any penal statute; which proviso has, by experience, 'been found inconvenient, by reason of challenges to the arrays of 'panels of jurors, and to the polls for default of hundredors;' Therefore, for prevention thereof for the future, be it enacted, That from and after the said first day of *Easter* Term, every *venire facias* for the trial of any issue, in any action or information upon any penal statute, in any of his Majesty's Courts of Record at *Westminster*, in the counties palatine of *Lancaster*, *Chester*, and *Durham*, and the principality of *Wales*, shall be awarded of the body of the proper county where such issue is triable; any thing in the said Act to the contrary notwithstanding.

No challenge to be taken to any panel of jurors for want of a knight's being returned, &c.

'IV. And whereas great delays do frequently happen in trials, where 'a peer or lord of Parliament is party, by reason of challenges to the 'arrays of panels of jurors, for want of a knight's being returned on such 'panels;' For remedy thereof for the future, Be it enacted by the authority aforesaid, That from and after the said first day of *Easter* Term, no challenge shall be taken to any panel of jurors, for want of a knight's being returned in such panel, nor any array quashed by reason of any such challenge taken after that time; any law, usage, or custom to the contrary notwithstanding.

12 Geo. 1. c. 31.

'V. And whereas by an Act of Parliament made in the twelfth year 'of the reign of King *George* the First, intituled, "An Act for the 'better regulating trials by *Nisi Prius* in the county of *Middlesex*;" 'power and authority is given to the Chief Justice of the *King's Bench*, 'the Chief Justice of the *Common Pleas*, and the Chief Baron of the 'Court of *Exchequer*, for the time being, and every of them respec-'tively, and in the absence of any of them, to and for any other judge 'or baron of the said several courts, as justices of *Nisi Prius* for the 'said county of *Middlesex*, within the term, or within the space of 'eight days after the end of any term respectively, to try all such 'issues as by an Act of Parliament made in the eighteenth year of the

18 Eliz. c. 12.

'reign of Queen *Elizabeth*, intituled "An Act for Trial of *Nisi Prius* in 'the county of *Middlesex*," they, or any of them, are enabled to try, in 'such place and manner, and with and under such powers, authorities,

12 Geo. 1. c. 31.

'and provisions, as in the said last-mentioned Act, or any other Act of 'Parliament, or law whatsoever concerning the premisses, are prescribed 'and contained: And whereas the restraining the time for such trials 'after the term, to eight days, hath been found inconvenient, and oc-'casioned delay of justice;' Be it therefore enacted by the authority aforesaid, That from and after the first day of *Easter* Term in the year of our Lord One thousand seven hundred and fifty-one, it shall and may be lawful to and for the Chief Justice of the *King's Bench*, the Chief Justice of the *Common Pleas*, and the Chief Baron of the Court of *Exchequer*, for the time being, and every of them respectively, and in the absence of any of them, to and for any other judge or baron of the said several courts, as justices of *Nisi Prius* for the said county of *Middlesex*, at any time or times within the space of fourteen days after the end of any term respectively, to try all such issues as by the beforementioned Acts they or any of them are enabled to try, in such place and manner, and under such powers, authorities, and provisions as in and by the aforesaid Acts, or any other Act of Parliament or law whatsoever concerning the premisses, are prescribed and contained; any thing in the beforementioned Acts to the contrary hereof in any wise notwithstanding.

Justice of *nisi prius* for the county of Middlesex, may, within fourteen days after the end of term, try issues.

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## [No. LXV.] 29 George II. c. 19.—An Act to empower Judges of Courts of Record in Cities and Towns Corporate, Liberties and Franchises, to set Fines on Persons who shall be summoned to serve upon Juries in such Courts, and shall neglect to attend.

[See post, Title *Inferior Courts*.]

[ No. LXVI. ] 38 George III. c. 52.—An Act to regulate the Trial of Causes, Indictments, and other Proceedings, which arise within the Counties of certain Cities and Towns Corporate within this Kingdom.—[1st *June* 1798.]

No. LXVI. 38 Geo. III. c. 52.

38 George III. c. 52.

'WHEREAS there at present exists, in the counties of cities and of towns corporate within this kingdom, an exclusive right, 'that all causes and offences which arise within their particular limits 'should be tried by a jury of persons residing within the limits 'of the county of such city or town corporate; which ancient privi-'lege, intended for other and good purposes, has in many instances 'been found, by experience, not to conduce to the ends of justice: 'And whereas it will tend to the more effectual administration of justice, 'in certain cases, if actions, indictments, and other proceedings, the 'causes of which arise within the counties of cities and towns corporate, 'were tried in the next adjoining counties:' in order therefore to remedy this mischief for the future, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same. That, from and after the passing of this Act, in every action, whether the same be transitory or local, which shall be prosecuted or depending in any of his Majesty's Courts of Record at *Westminster*, and in every indictment removed into his Majesty's Court of King's Bench by writ of *certiorari*, and in every information filed by his Majesty's Attorney or Solicitor General, or by the leave of the Court of King's Bench, and in all cases where any person or persons shall plead to or traverse any of the facts contained in the return to any writ of *mandamus*, if the *venue* in such action, indictment, or information, be laid in the county of any city or town corporate within that part of *Great Britain* called *England*, or if such writ of *mandamus* be directed to any person or persons, body politic and corporate, that it shall and may be lawful for the court in which such action, indictment, information, or other proceeding shall be depending, at the prayer and instance of any prosecutor or plaintiff, or of any defendant, to direct the issue or issues joined in such action, indictment, information, or proceeding, to be tried by a jury of the county next adjoining to the county of such city or town corporate, and to award proper writs of *venire* and *distringas* accordingly, if the said court shall think it fit and proper so to do.

In actions in any court of record at Westminster, &c. if the venue be laid in the county of any city or town corporate in England, &c. the court may direct the issue to be tried by a jury of the county next adjoining.

II. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any prosecutor or prosecutors to prefer his, her, or their bill or bills of indictment, for any offence or offences committed, or charged to be committed, within the county of any city or town corporate, to the jury of the county next adjoining to the county of such city or town corporate, sworn and charged to inquire for the King, for the body of such adjoining county, at any sessions of oyer and terminer, or general gaol delivery; and that every such bill of indictment, found to be a true bill by such jury, shall be valid and effectual in law, as if the same had been found to be a true bill by any jury sworn and charged to inquire for the King for the body of the county of such city or town corporate.

Bills of indictment for offences committed within the county of any city or town corporate may be preferred to the jury of the county next adjoining.

III. And be it further enacted by the authority aforesaid, That if it shall appear to any court of oyer and terminer or general gaol delivery for the county of any city or town corporate, that any indictment found by any Grand Jury of the county of such city or town corporate, or any inquisition taken before the coroner or coroners of the county of such city or town corporate, or other franchise, is fit and proper to be tried by a jury of any next adjoining county, that it shall and may be lawful for the said court of oyer and terminer or general gaol delivery, at the prayer of any defendant, to order such indictment or inquisition, and the several recognizances, examinations, and depositions relative to such indictments and inquisitions, to be filed with the

Indictments found by a grand jury of the county of any city or town corporate, or inquisitions taken before the coroner, may be ordered by the court of oyer

No. LXVI. 38 Geo. III. c. 52.

&c. there to be filed with the proper officer of the next adjoining county, and the defendants removed to the gaol thereof, &c.

proper officer, to be by him kept among the records of the courts of oyer and terminer and general gaol delivery for such next adjoining county, and to cause the defendant or defendants in such indictment to be removed, by writ of *habeas corpus*, to the gaol of such next adjoining county; which writ the said court is hereby directed and authorized to issue, if such defendant or defendants be in the prison of such city or town corporate: and if he, she, or they be not in such prison, to commit such defendant or defendants to the gaol of such next adjoining county, and to cause the prosecutors and witnesses against such defendant or defendants, to enter into a recognizance or recognizances to prosecute and give evidence against such defendant or defendants at the sessions of oyer and terminer and general gaol delivery for such next adjoining county; and that the same proceedings and trial shall be had, and the same judgment shall be given, in such last-mentioned court of oyer and terminer or general gaol delivery, as would and might be had and given in cases of indictments or inquisitions for the like offences, committed within such next adjoining counties.

The judges of the Court of King's Bench, &c. may on application of the prosecutor, cause persons in custody for offences committed within the county of any city or town corporate, to be removed into the custody of the sheriff of the next adjoining county, for trial; and direct coroners to return to the court of oyer and terminer inquisitions, &c.

IV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any of the judges of his Majesty's Court of King's Bench, or any of the justices of oyer and terminer or general gaol delivery, for such next adjoining or other county as aforesaid, on the application of any such prosecutor or prosecutors ten days next before the holding of any sessions of oyer and terminer, or general gaol delivery, for such last mentioned county, by proper writs of *Habeas Corpus*, which they are hereby empowered and authorized to issue, to cause any person or persons who may be in the custody of any sheriff or sheriffs, or of the keepers of any gaol or prison, charged with any offence or offences committed within the county of any such city or town corporate, to be removed into the custody of the sheriff of such next adjoining county, in order that he, she, or they may, for such offence or offences as aforesaid, be tried in such last-mentioned county; and by order under the hand of any one of the said judges or justices of oyer and terminer and general gaol delivery to direct the coroner or coroners of the county of any such city or town corporate, or other franchise, to return to the next court of oyer and terminer or general gaol delivery, to be holden for such next adjoining county, any inquisition or inquisitions, examination or deposition taken touching the death of any person or persons within the limits of his or their jurisdictions; and that whenever, in pursuance of this Act, any bill or bills of indictment shall be found by such grand jury as aforesaid, against any person or persons, for any offence or offences committed or charged to be committed, within the county of any city or town corporate, that it shall and may be lawful for the said courts of oyer and terminer and general gaol delivery, to issue process for apprehending the person or persons against whom such bill or bills of indictment shall be found, if not in custody, and to compel the attendance of witnesses upon the trial of such indictments, in like manner as in cases of indictments found in any such court of oyer and terminer or general gaol delivery, for offences committed within such adjoining counties.

Recognizances entered into for prosecution of persons for offences committed within the county of any city or town corporate, &c. to be forfeited, if the parties, on notice of intention to prefer indictments in the next adjoining county,

V. And be it enacted by the authority aforesaid, That every recognizance which, after the passing of this Act, shall be entered into for the prosecution of any person or persons, for any offence or offences committed, or charged to be committed, within the county of any city or town corporate, or within any liberty or franchise, and every recognizance for the appearance as well of witnesses to give evidence upon any bill of indictment to be preferred, or any inquisition found for any such offence or offences as aforesaid, as for the appearance of any person or persons to answer our Lord the King, for or concerning the same, shall be forfeited, if the prosecutor shall, ten days previous to the holding of the next court of oyer and terminer or gaol delivery, in the next adjoining or other county, give notice to the person bound in such recognizance to give evidence upon such bill of indictment, or to answer our said Lord the King as aforesaid, of the intention to prefer such indictment, or to remove such inquisition in or into the next

adjoining or other county, and the party bound in such recognizance shall not appear, prosecute, or give, or be ready to give, evidence at such court; but if the person bound in such recognizance, after notice as aforesaid, shall appear at such court of the next adjoining or other county, prosecute, give, or be ready to give, evidence on such indictment before the grand jury, and on the trial thereof, or on the trial of such inquisition, then the said recognizance shall be discharged in such and the like manner as if the person bound in such recognizance had complied with the terms thereof.

do not appear, &c.

VI. Provided also, That in case the person or persons who shall enter into such recognizance or recognizances as aforesaid, cannot be found, and such notice as aforesaid be left at his, her, or their last place of abode, ten days previous to the holding such sessions as last aforesaid, the same shall be as good and effectual as if the same were left with the person or persons who shall enter into such recognizance or recognizances; and that no such recognizance shall be estreated or returned into the Court of Exchequer until the next following session of oyer and terminer or general gaol delivery to be holden for such next adjoining county, in order that such recognizance or recognizances may be discharged, in case the person or persons who shall have entered into the same shall shew to such court of oyer and terminer or general gaol delivery sufficient cause for discharging the same.

Notice left at the abode of recognizors who cannot be found, to be effectual.

Recognizances not to be estreated until the next following sessions for the adjoining county.

VII. And be it enacted by the authority aforesaid, That all and every person and persons, before whom any such recognizance or recognizances as aforesaid shall be entered into, or by whom any examination or deposition shall be taken, touching any such offence or offences as aforesaid, shall, and they are hereby required to return the same to the next court of oyer and terminer and general gaol delivery for such next adjoining county as aforesaid, upon such prosecutor or prosecutors as aforesaid leaving at the dwelling-house or other place of abode of the person or persons before whom such recognizance or recognizances shall be entered into, or by whom such examination or deposition shall be taken, ten days before the holding of any sessions of oyer and terminer or general gaol delivery for such next adjoining or other county as aforesaid, notice in writing of his, her, or their intention to prosecute such indictment or inquisition at such last-mentioned sessions of oyer and terminer or general gaol delivery, for any offence or offences committed within the county of any city or town corporate; and that after the delivery as aforesaid of any of the said notices, it shall not be lawful for any person or persons to prefer any bill or bills of indictment, or to return any inquisition, for any offence or offences mentioned in the said recognizances, or any of them, at or to any sessions of oyer and terminer or general gaol delivery for the county of such city or town corporate,

Persons before whom such recognizances shall be entered into, &c. to return them to the next court of oyer and terminer for the next adjoining county, upon notice of intention to prosecute at such sessions for any offence committed within the county of any city or town corporate.

After such notice, bills shall not be preferred, &c. at any sessions for the county of the city or town corporate.

VIII. And be it further enacted by the authority aforesaid, That in all cases of indictments, and other proceedings, which may be tried before his Majesty's justices of oyer and terminer or general gaol delivery for any county, in pursuance of the provisions contained in this Act, it shall and may be lawful for such justices to order the expenses of the prosecution, and of the witnesses, and of the several rewards payable in pursuance of the statutes in such cases made and provided on the conviction of offenders, to be paid by and to the same persons, and in the same manner, as the same would be payable if such indictment had been tried in the court of oyer and terminer or general gaol delivery of the county of such city or town corporate.

Justices of oyer and terminer for the adjoining county may order the expenses of prosecution, &c. to be paid, as if the indictment had been tried in the court of the county of the city or town corporate.

IX. And be it further enacted by the authority aforesaid, That, for the purposes of this Act, the county of *York* shall be considered as the next adjoining county to the county of the town of *Kingston-upon-Hull*; the county of *Northumberland* as the next adjoining county to the county of the town of *Newcastle-upon-Tyne*.

York to be considered as next county to Kingston-upon-Hull, and Northumberland as next to Newcastle-upon-Tyne.

No. LXVI. 38 Geo. III. c. 52.

Act not to extend to certain places;

X. Provided always, That nothing in this Act shall extend, or be construed to extend, to the cities of *London* and *Westminster*, or the borough of *Southwark*, or the city or county of the city of *Bristol*, or the city or county of the city of *Chester*, or to the criminal jurisdiction of the city of *Exeter* and county of the same city, unless in cases of indictment removed into his Majesty's Court of King's Bench by writ of *Certiorari*, from any court of criminal jurisdiction, within the said city or county of the said city of *Exeter*.

nor to take away any other ancient privileges of corporations, who shall not be liable to attend as jurymen upon the trial of any cause in the county at large.

XI. Provided also, That nothing in this Act shall extend, or be construed to extend, to take away any other rights or privileges which have been anciently granted to such corporations, by royal charters or grants, and which have been immemorially held and enjoyed by such corporations; but that they shall continue in the full possession of all their other exclusive rights and privileges as much as if this Act of Parliament had never passed; and that they shall not be obliged to attend as jurymen upon the trial of any cause or any indictment which may be removed from the limited jurisdiction to the county at large, nor upon the trial of any other cause, or any other indictment, which may be tried before his Majesty's justices of assize, oyer and terminer, and general gaol delivery, in the next adjoining county.

Act not to authorise the preferring any bill of indictment for an offence committed within the county of any city or town corporate to the jury of the next adjoining county, unless recognizance be entered into to pay the extra costs.

XII. Provided always, and be it further enacted by the authority aforesaid, That nothing in this Act contained shall extend or be construed to extend, to enable any person to prefer any bill of indictment for any offence committed, or charged to be committed, within the county of any city or town corporate, to the jury of such next adjoining county as aforesaid, or to remove any indictment or other criminal proceeding, except the person preferring such bill, or applying for such removal, shall enter into a recognizance before the court where such bill shall be preferred, or the court or magistrate to whom such application shall be made, as the case may be, in the sum of forty pounds, conditioned to pay the extra costs attending the prosecuting for such offence in such next adjoining county, provided the court before whom the trial is had shall be of opinion that he ought to pay the same.

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## [ No. LXVII. ] 44 George III. c. 102.—An Act for the more effectual Administration of Justice in those parts of the United Kingdom of *Great Britain* and *Ireland* called *England* and *Ireland*, by the issuing of writs of *habeas corpus ad testificandum*, in certain Cases. [28th *July* 1801.]

44 George III. c. 102.

'WHEREAS it is expedient, for the more effectual administration 'of justice in those parts of the United Kingdom of *Great Britain* and *Ireland* called *England* and *Ireland*, that further provi'sions should be made for the issuing of writs of *habeas corpus ad* '*testificandum*, in certain cases:' Be it therefore enacted and declared by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, it shall be lawful for any judge of his Majesty's Courts of King's Bench or Common Pleas of *England* and *Ireland* respectively, or any baron of his Majesty's Court of Exchequer of the degree of the coif in *England*, or any baron of his Majesty's Court of Exchequer in *Ireland*, or any justice of oyer and terminer or gaol delivery, being such judge or baron as aforesaid, at his discretion, to award a writ or writs of *habeas corpus*, for bringing any prisoner or prisoners detained in any gaol or prison before any of the said courts, or any sitting of *nisi prius*, or before any other court of record in the said parts of the said United Kingdom, to be there examined as a witness or witnesses, and to testify the truth before

Any judge of the superior courts of England or Ireland may award writs of habeas corpus for bringing prisoners before courts of record to be examined as witnesses.

such courts, or any grand, petit, or other jury, in any cause or causes, matter or matters, civil or criminal, whatsoever, which now are or hereafter shall be depending, or to be inquired into or determined in any of the said courts.

No. LXVII. 44 Geo. III. c. 102.

II. And be it further enacted, That every justice of Great Session in *Wales*, and in the county palatine of *Chester*, shall have the like authority within the limits of his jurisdiction.

In Wales justices of Great Sessions shall have like authority.

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[ No. LXVIII. ] 59 Geo. III. c. 35.—An Act to amend an Act passed in the 55th year of the reign of His present Majesty intituled an Act to facilitate the administration of Justice in that part of the United Kingdom called *Scotland* by extending trial by Jury to civil causes. [19th *May* 1819.]

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[ No. LXIX. ] 1 George IV. c. 21.—An Act to enable the Chief Justice of the King's Bench, or in his Absence any Judge of the same Court, to try *Middlesex* Issues at Nisi Prius elsewhere than in *Westminster Hall*. [23d *June* 1820.]

1 George IV. c. 21.

WHEREAS by virtue of several statutes, made in the respective reigns of Queen *Elizabeth*, King *George* the First, and King *George* the Second, the Lord Chief Justice of the Court of King's Bench for the time being, or in his absence or default any other judge of the same court, hath power to try at *Nisi Prius* all manner of issues joined in the same court, or in the Court of Chancery, which ought to be tried by an inquest of the county of *Middlesex*, within any term, or fourteen days next after the same, but only within the hall commonly called *Westminster Hall*; And whereas it is expedient that the said chief justice or judge should be empowered, during the vacation next after *Trinity* term, in the first year of the reign of his present Majesty, and also in any other term or vacation hereafter, to try the same issues, in the same manner as is provided by the said statutes respectively, elsewhere than in the said hall: may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for the said Chief Justice of the King's Bench, or in his absence any other judge of the same court, in the vacation next after *Trinity* term, in the first year of the reign of his present Majesty, without any other authority than this Act, and also in any other term or vacation hereafter, by and with the consent of his Majesty, his heirs or successors, to be signified under his or their sign manual, to try all issues joined or to be joined therein, or in the Court of Chancery, wherein the trial ought to be in the said county of *Middlesex*, by an inquest taken from the body of the said county, either in the said hall or in any other fit place in the city of *Westminster*, as to the same chief justice shall from time to time appear convenient in that behalf, for so many days, and in such manner and form, as the same issues or any of them might be tried by the said chief justice in the said hall called *Westminster Hall*.

In vacation next after Trinity term, 1 G. 4. and in any future term with consent of his Majesty, Chief Justice of the King's Bench, &c. may try issues in any place in the city of Westminster.

II. And be it further enacted, That as well the sheriff of the said county of *Middlesex* as all other officers whatsoever, and also all jurors, parties, witnesses, or other persons who may be required to attend or who ought to attend at or for the trial of any such issue to be so tried as aforesaid, if the same had been or should be tried in the said hall, shall give his and their attendance at and for the trial thereof at the place where the said chief justice, or in his absence any other judge of

Sheriff and other officers, jurors, and witnesses, &c. to give their attendance as in cases of issues tried in Westminster Hall.

No. LXIX.
1 George IV.
c. 21.

the said court, shall be sitting for the trial thereof, upon reasonable notice to him or them in that behalf, and shall be subject to such and the same pains and penalties for non-attendance, and entitled to such and the same fees and remuneration for his and their attendance, as if such issue had been actually tried in the said hall; and that all writs, process, notices, and other proceedings (other than and except a special notice of the place of trial) heretofore issued, made, or had, or to be hereafter issued, made, or had, for the trial of any such cause according to the forms now in use for the trial of such issues as aforesaid in the said hall, shall be as good and available in the law, to all intents and purposes, as if such issue had been actually tried in the said hall; and that all trials had at any such place as aforesaid, in virtue of this Act, shall be deemed and taken to have been had, and may in any record, process, or other proceeding, and also in any indictment for perjury, or other offence committed at or in relation to any such trial, be alleged and laid to have been had in the said hall, in all respects and to all purposes as if such trial had been actually had in the said hall.

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## [ No. LXX. ] 1 George IV. c. 55.—An Act for giving further Facilities to the Proceedings in the Court of King's Bench, and for giving certain Powers to Justices of Assize. [15th *July* 1820.]

1 George IV. c. 55.
24 G. 2. c. 18.

WHEREAS by an Act made in the twenty-fourth year of the reign of King *George* the Second, intituled *An Act for the better Regulation of Trials by Jury, and for enlarging the Time for Trials by Nisi Prius in the County of* Middlesex, power and authority is given to the Chief Justice of the King's Bench, the Chief Justice of the Common Pleas, and the Chief Baron of the Court of Exchequer for the time being, and every of them respectively, and in the absence of any of them, to and for any other judge or baron of the said several courts, as justices of *nisi prius* for the said county of *Middlesex*, at any time within the space of fourteen days after the end of any term respectively, to try all such issues as by an Act, made in the eighteenth year of the reign of Queen *Elizabeth*, intituled *An Act for Trial of Nisi Prius in the County of* Middlesex, they or any of them are enabled to try in such place and manner, and with and under such powers, authorities, and provisions as in the said last mentioned Act, or in an Act made in the twelfth year of the reign of King *George* the first, intituled *An Act for the better regulating Trials by Nisi Prius in the County of* Middlesex, or any other Act of Parliament or law whatsoever concerning the premises, are prescribed and contained: And whereas it may be convenient that the time for such trials after the term be still further extended; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act it shall and may be lawful to and for the Chief Justice of the King's Bench, the Chief Justice of the Common Pleas, and the Chief Baron of the Court of Exchequer for the time being, and every of them respectively, and in the absence of any of them, to and for any other judge or baron, of the said several courts, and also to and for any judge of the King's Bench, sitting for the trial of causes, according to the powers hereinafter in that behalf given, as justices of *nisi prius* for the said county of *Middlesex*, at any time or times after the end of any term respectively, during the vacation after such term, to try all such issues as by the before-mentioned acts they or any of them are enabled to try, in such place and manner, and under such powers, authorities, and provisions, as in and by the aforesaid Acts or any other Act of Parliament or law whatsoever concerning the premises, are prescribed and contained; any thing in the before mentioned Acts to the contrary hereof in any wise notwithstanding.

18 Eliz. c. 12.

12 G. 1. c. 31.

Justices of nisi prius may sit after term, during the vacation, to try issues.

No. LXX.
1 George IV.
c. 55.

II. And whereas from the increase of business in the Court of King's Bench, it is expedient that further facilities should be afforded as well for the trial of issues in *Middlesex* and *London*, as for the purpose of expediting the other proceedings in the same court; be it further enacted, That from and after the passing of this Act, and for the space of two years then next following, it shall and may be lawful to and for any one of the judges of the said Court of King's Bench, at the request of the Lord Chief Justice of the same court, to sit for the trial of causes at *nisi prius* in *Westminster* and *London*, on the same days on which the said Lord Chief Justice, or any other judge of the same court in the absence of the said Lord Chief Justice shall be sitting, for the trial of causes at those places respectively, or at either of them, so that the trial of two causes may be proceeded in at the same time; and all jurors, witnesses, and other persons who may have been summoned or required to attend, and who ought to attend at or for the trial of any cause before the said Lord Chief Justice, during the time aforesaid, shall give their attendance at and for the trial thereof, before such other judge as may be sitting for the trial thereof by virtue of this Act; and it shall and may be lawful to and for the marshal and other officers of the said Lord Chief Justice to appoint from time to time fit and proper persons to be approved by the said Chief Justice, to attend for them and on their behalf respectively before such judge: Provided always, that all causes intended to be tried at any sittings at *Nisi Prius* in *Middlesex* or *London*, shall be entered for trial with the marshal of the said chief justice, and all process and other proceedings for or relating to the trial thereof, shall be made and issued according to the practice and forms now in use; but nevertheless, the trial of every cause which shall be tried in virtue of this Act, shall be entered of record as having been had and made before the judge before whom such cause shall happen to have been actually tried.

Any of the judges of the Court of King's Bench may sit for the trial of causes at nisi prius in Westminster and London, on the same days on which the chief justice is sitting.

Jurors and witnesses to attend.

Marshal, &c. to appoint proper persons to attend.

Causes to be entered with the marshal.

III. And be it further enacted, That from and after the passing of this Act, all persons who are directed to be brought before the Court of King's Bench, by a certain Act of Parliament passed in the thirty-second year of the reign of his late Majesty King *George* the Second, commonly called "The Lords' Act," or by any other law for the relief of insolvent debtors, may hereafter be brought before some single judge of the same court, sitting under the authority of an Act made and passed in the fifty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An Act to facilitate the Progress of Business in the Court of King's Bench in* Westminster Hall; and that all orders made by and all proceedings had before such single judge, shall be as good, valid, and effectual, to all intents and purposes, as if such orders had been made by and such proceedings had before the said Court of King's Bench.

Insolvents brought up under the Lords' Act, 32 G. 2. c. 28. may be brought before a single judge of the King's Bench, sitting under 57 G. 3. c. 4.

IV. And be it further enacted, That all oaths directed by an Act passed in the thirteenth year of King *Charles* the Second, intituled *An Act for the well-governing and regulating of Corporations*, and by an Act of the twenty-fifth year of the same reign, intituled *An Act for preventing Dangers which may happen from Popish Recusants*, or by any other statute now in being, to be taken by persons admitted to offices of trust and profit, and by all barristers and attornies, may, after the passing of this Act, be administered and taken, and the declaration mentioned in the said Act of the twenty-fifth year of King *Charles* the Second, may be made and subscribed before such single judge sitting as aforesaid; and that the proper officer shall, at seasonable times, attend before such single judge, for the purpose of administering such oaths, and registering such subscription.

13 C. 2. c. 1.
25 C. 2. c. 2.
Corporations and other oaths directed to be taken before the court may be taken before a single judge.

V. And whereas it is expedient that the justices of the Courts of King's Bench and Common Pleas, and the barons of the Exchequer at *Westminster*, and the justices of *Chester*, should have power and authority, upon their respective circuits for taking the assizes, to grant summonses, and to make orders in actions and prosecutions, in the manner hereinafter mentioned; be it therefore enacted, That from and after the passing of this Act it shall and may be lawful for the justices of the

Justices at nisi prius may make orders in causes to be tried before them, although not judges of the

No. LXX. 1 George IV. c. 55.

court in which such actions are brought.

Courts of King's Bench and Common Pleas, and the barons of the Exchequer at *Westminster*, and the justices of *Chester*, and each and every or any one of them, during their respective circuits for taking the assizes, to grant such and the like summonses, and make such and the like orders, in all actions and prosecutions which are or shall be depending in any of His Majesty's Courts of Record at *Westminster* in which the issue, if brought to trial, would be to be tried upon such their respective circuits, as if such justices of the Courts of King's Bench and Common Pleas, and barons of the Exchequer, and justices of *Chester*, were respectively judges of the court in which such actions or prosecutions are or shall be depending, although such respective justices of the Courts of King's Bench and Common Pleas, and barons of the Exchequer, and justices of *Chester*, or any of them, may not be judges of the court in which such actions or prosecutions are or shall be depending; and such summonses and orders shall be of the same force and effect as if such justices of the Courts of King's Bench and Common Pleas, and barons of the Exchequer, at *Westminster*, and justices of *Chester*, were respectively judges of the court in which such actions or prosecutions are or shall be depending.

The three counties palatine to be taken as counties on the circuit.

VI. And be it further enacted, That for the purposes of this Act, the counties palatine of *Lancaster*, *Durham*, and *Chester*, shall be taken to be counties on the circuits of the respective justices of the Courts of King's Bench and Common Pleas, and barons of the Exchequer, at *Westminster*, and justices of *Chester*.

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## [ No. LXXI. ] 1 & 2 George IV. c. 46.—An Act to regulate the Attendance of Jurors at the Assizes, in certain Cases. [8th *June* 1821.]

1 & 2 George IV. c. 46.

WHEREAS the jurors returned by sheriffs and other officers, for the trial of causes at the assizes of the several counties in *England* and *Wales*, and the counties palatine of *Chester*, *Durham* and *Lancaster*, are by law compelled to remain and continue in attendance from the beginning of the assizes, in the counties aforesaid, to the end thereof: And whereas, from the great length of time that the assizes frequently last in many of the counties of *England* and *Wales*, and the counties palatine of *Chester*, *Durham* and *Lancaster*, the attendance of jurors from the beginning to the end of the assizes, is in many cases extremely burthensome and expensive to the said jurors: For remedy whereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, That from henceforth, in any county in which the judge or justices of assize in *England*, or the judge or justices of the grand sessions in any county of *Wales*, or the justices of the courts of sessions held for the counties palatine of *Chester*, *Durham* or *Lancaster*, shall think fit so to direct, the sheriff or other officer to whom the return of the *venire facias juratores* or other process for the trial of causes at *nisi prius* doth belong, shall summon and impanel not more than one hundred and forty-four jurors, or such lesser number as the judge or justices of assize in *England*, or the judge or justices of assize of the grand sessions in *Wales*, or the justices of the courts or sessions in the counties palatine of *Chester*, *Durham* or *Lancaster*, shall think fit to direct, to serve indiscriminately on the criminal and civil side; and shall divide such jurors equally into two sets, the first of which set shall attend and serve for so many days at the beginning of each assizes, as the judge or justices of assize in *England*, or the judge or justices of the grand sessions in *Wales*, or the justices of the courts of sessions in the counties palatine of *Chester*, *Durham* or *Lancaster*, shall before or at the commencement of such assizes respectively think fit to direct; and the other of which sets shall attend and serve for the residue of such assizes.

Judge of assize, &c. may direct two sets of jurors to be summoned, one to attend at the beginning of each assizes, and the other to attend the residue thereof, to serve indiscriminately on the criminal and civil side.

No. XLIX. 1 & 2 G. IV. c. 46.

II. And be it further enacted, That such sheriff or other officer shall, in the summons to the persons in each of such sets, require the attendance of such persons at the said assizes generally, according to the mode now in use, but upon the back of each summons he shall indorse whether the person named therein is in the first or second set, and shall specify at what time the attendance of such person will be required.

Attendance of jurors to be required generally, but summons shall be indorsed either for the first or second set.

III. And be it further enacted, That every such attendance and service of such jurors shall entitle such jurors to the like certificates and exemptions as they have been heretofore entitled to, for their attendance and service during the whole assizes.

Such jurors shall be entitled to the like certificates and exemptions as heretofore.

IV. And be it further enacted, That the sheriff or other officer to whom the return of the *venire facias juratores* or other process for the trial of causes at *nisi prius* doth belong, shall, upon his return of every such writ or process, annex thereto a panel, containing the christian and surnames, additions and places of abode, of the persons in each of such sets; and during the attendance and service of the first of such sets, the jury on the civil side shall be drawn from the names of the persons in that set, and during the attendance and service of the second of such sets, from the names of the persons in such second set.

Juries for trial of causes at nisi prius to be drawn from the set in attendance.

# PART IV.

## CLASS X.

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### *Evidence.*

### [ No. I. ] 5 Elizabeth, c. 9.—An Act for the punishment of such as shall procure or commit any wilful perjury.

[This at length *infra*.]

5 Elizabeth, c. 9.

Process served upon witnesses to testify.

XII. PROVIDED also, and be it further enacted by the authority aforesaid, That if any person or persons upon whom any process out of any of the courts of record within this realm of *Wales* shall be served to testify or depose concerning any cause or matter depending in any of the same courts, and having tendered unto him or them, according to his or their countenance or calling, such reasonable sums of money for his or their costs or charges, as, having regard to the distance of the places, is necessary to be allowed in that behalf, do not appear according to the tenor of the said process, having not a lawful and reasonable let or impediment to the contrary; that then the party making default, to lose and forfeit for every such offence ten pounds, and to yield such further recompence (1) to the party grieved, as by the discretion of the judge of the court, out of the which the said process shall be awarded, according to the loss and hindrance that the party which procured the said process shall sustain by reason of the non-appearance of the said witness or witnesses, the said several sums to be recovered by the party so grieved against the offender or offenders, by action of debt, bill, plaint, or information, in any of the Queen's Majesty's courts of record, in which no wager of law, essoign or protection to be allowed.

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### [ No. II. ] 7 James I. c. 12.—An Act to avoid the double payment of debts. *

7 James I. c. 12.

'WHEREAS divers men of trades, and handicraftsmen keeping 'shop-books, do demand debts of their customers upon their 'shop-books long time after the same hath been due, and when as they 'have supposed the particulars and certainty of the wares delivered to 'be forgotten, then either they themselves or their servants have in-'serted into their said shop-books divers other wares supposed to be 'delivered to the same parties, or to their use, which in truth never 'were delivered, and this of purpose to increase by such undue means 'the said debt: And whereas divers of the said tradesmen and handi-

(1) The action for a further recompence will not lie unless it has been previously assessed by the court out of which the process issued; neither the jury nor the judge at nisi prius being competent to make the assessment; Pearson *v.* Isles, Doug. 556. See the observations in that case, as to what will be a reasonable let within the statute. An action on the case will lie for damages against a witness who absents himself without any excuse; dict. ibid. In Bland *v.* Swafford, 1 Peake N. P. 60, Lord Kenyon held that no action would lie against a witness, unless the cause was called on, and the jury sworn.

* At the time of passing this Act the law of evidence was in a very unsettled state, and had by no means acquired that systematic regularity by which it is at present distinguished. The Act, by excluding the admissibility of the shop-book as evidence, except under particular circumstances, would seem to recognize that such evidence, so far as it is not positively restrained, might be admitted; which is contrary to the known and established course of the law, as at present administered; and to several cases subsequent to the Act in which such evidence was expressly disallowed.

No. II.
7 James I.
c. 12.

'craftsmen, having received all the just debt due upon their said shop-'books do oftentimes leave the same books uncrossed, or any way 'discharged, so as the debtors, their executors or administrators, are 'often by suit of law enforced to pay the same debts again to the party 'that trusted the said wares, or to his executors or administrators, unless 'he or they can produce sufficient proof by writing or witnesses, of the 'said payment, that may countervail the credit of the said shop-books, 'which few or none can do in any long time after the said payment:' Be it therefore enacted by the authority of this present Parliament, That no tradesman or handicraftsman keeping a shop-book as is aforesaid, his or their executors or administrators, shall, after the Feast of Saint *Michael* the Archangel next coming, be allowed, admitted or received to give his shop-book in evidence in any action for any money due for wares hereafter to be delivered, or for work hereafter to be done, above one year before the same action brought, except he or they, their executors or administrators, shall have obtained or gotten a bill of debt or obligation of the debtor for the said debt, or shall have brought or pursued against the said debtor, his executors or administrators, some action for the said debt, wares or work done, within one year next after the same wares delivered, money due for wares delivered, or work done.

In what case a tradesman's shop-book shall be no evidence to recover a debt.

II. Provided always, That this Act, or any thing therein contained, shall not extend to any intercourse of traffic, merchandizing, buying, selling, or other trading or dealing for wares delivered or to be delivered, money due, or work done or to be done, between merchant and merchant, merchant and tradesman, or between tradesman and tradesman, for any thing directly falling within the circuit or compass of their mutual trades and merchandize, but that for such things only they and every of them shall be in case as if this Act had never been made; any thing herein contained to the contrary thereof notwithstanding.

Intercourse of traffic between merchants.

III. This Act to continue to the end of the first session of the next Parliament, and no longer. [3 Car. I. c. 4. continued until the end of the first session of the next Parliament, and farther continued by 16 Car. I. c. 4.]

Continuance of this Act.

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[ No. III. ] 7 and 8 William III. c. 34.—An Act that the solemn affirmation and declaration of the people called Quakers, shall be accepted instead of an oath in the usual form.

19.

7 & 8 Will. III. c. 34.

'WHEREAS divers dissenters, commonly called *Quakers*, refusing 'to take an oath in courts of justice and other places, are fre-'quently imprisoned and their estates sequestered, by process of con-'tempt issuing out of such courts, to the ruin of themselves and fami-'lies:' For remedy thereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the fourth day of *May*, which shall be in the year of our Lord One thousand six hundred ninety-six, every Quaker within this kingdom of *England*, dominion of *Wales*, or town of *Berwick-upon-Tweed*, who shall be required upon any lawful occasion to take an oath, in any case where by law an oath is required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in these words following, *viz.*

Quakers to make the following affirmation,

'I, *A. B.* do declare, in the presence of Almighty God, the witness 'of the truth of what I say.'

II. Which said solemn affirmation or declaration shall be adjudged and taken, and is hereby enacted and declared to be of the same force and effect to all intents and purposes, in all courts of justice and other

which is to be of the same force in law as an oath.

No. III. 7 & 8 W. III. c. 34.

places where by law an oath is required within this kingdom of *England*, dominion of *Wales*, or town of *Berwick-upon-Tweed*, as if such Quaker had taken an oath in the usual form.

Penalty on false affirmation.

III. And be it further enacted by the authority aforesaid, That if any Quaker, making such solemn affirmation or declaration, shall be lawfully convicted, wilfully, falsely, and corruptly to have affirmed or declared any matter or thing, which, if the same had been in the usual form, would have amounted to wilful and corrupt perjury; every such Quaker so offending shall incur the same penalties and forfeitures as by the laws and statutes of this realm are enacted against persons convicted of wilful and corrupt perjury. (1)

Quakers not to give evidence in criminal causes, &c.

VI. Provided, and be it enacted, That no Quaker or reputed Quaker shall by virtue of this Act be qualified or permitted to give evidence in any criminal causes, or serve on any juries, or bear any office or place of profit in the Government; any thing in this Act contained to the contrary in any wise notwithstanding. (2)

This Act was made perpetual by 1 George I. st. 2. c. 6.

VII. Provided, That this Act shall continue in force for the space of seven years, and from thence to the end of the next session of Parliament, and no longer.

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[ No. IV. ] 22 George II. c. 46.—An Act to continue several laws for preventing exactions of the occupiers of locks and weirs upon the river *Thames* westward, and for ascertaining the rates of water carriage upon the said River; * * * * * * and for allowing Quakers to make affirmation in cases where an oath is or shall be required.

22 Geo. II. c. 46. 8 Geo. 1. c. 6.

'XXXVI. AND whereas a doubt hath arisen, whether the solemn affirmation or declaration of the people called Quakers, 'prescribed by an Act made in the eighth year of the reign of his late 'Majesty King *George* the First, intituled, "An Act for granting the 'people called Quakers such forms of affirmation or declaration as 'may remove the difficulties which many of them lie under" (3) can be 'allowed and taken instead of an oath, in any case wherein by any Act 'or Acts of Parliament an oath is required, unless the said affirmation 'or declaration be by such Act or Acts of Parliament, particularly and 'expressly directed to be allowed and taken instead of such oath; by 'reason of which doubt the testimony of the said people called Quakers

(1) Sections IV. and V. relate to the recovery of tithes. See Part II. Class II. No. VIII.

(2) The affirmation of Quakers may be received as evidence in penal actions; Atcheson v. Everett, Cowp. 382.: so on motions for an attachment for non-performance of awards, which is regarded as a civil remedy; Taylor v. Scott, and other cases cited ibid.: in an affidavit in defence of the party himself, upon an application for an information; Rex v. Shacklington, Andr. 201, n.; Rex v. Gardener, 2 Bur. 1117: on a rule on the crown side of B. R. respecting an appointment of overseers; Rex v. Turner, 2 Str. 1219. NOT to support a criminal information, or articles of the peace against another; Rex v. Wych, 2 Str. 872; Rex v. Gardener, ub. sup.; Rex v. Green, Str. 527: on an appeal of felony; Castill v. Bainbridge, Cowp. 392.

About the year 1798 a bill was brought into Parliament by the late Serjeant Adair, who had been Recorder of London, to admit the affirmation of Quakers in criminal cases, which, as far as my recollection serves, passed the House of Commons, but was thrown out in the House of Lords, upon the opposition of Lord Kenyon. Considering that testimony given upon affirmation is subject to all the penal consequences of perjury, I think it would be very desirable to remove the exceptions as to criminal cases; for with respect to the moral and religious obligation, few persons who would venture to assert a falsehood in a court of justice would hesitate upon the religious scruple of taking an oath; and the exception rather operates in exclusion of the truth, which might be otherwise manifested on behalf of the public or the party accused, than as a bar to the reception of a falsehood.

(3) This Act only prescribes forms of affirmations, instead of the oaths to Government, and enacts (sect. 3.) that the provisions 7 and 8 William III. c. 34. shall, except so far as thereby repealed, continue of the same force as before.

'is frequently refused; whereby the said people, and others requiring 'their evidence, are subjected to great inconveniences:' Therefore for removing the said doubt, Be it enacted and declared by the authority aforesaid, That in all cases wherein by any Act or Acts of Parliament now in force, or hereafter to be made, an oath is or shall be allowed, authorized, directed, or required, the solemn affirmation or declaration of any of the people called Quakers, in the form prescribed by the said Act made in the eighth year of his said late Majesty's reign, shall be allowed and taken instead of such oath, although no particular or express provision be made for that purpose in such Act or Acts; and all persons who are or shall be authorised or required to administer such oath, shall be, and are hereby authorized and required to administer the said affirmation or declaration; and the said solemn affirmation or declaration, so made as aforesaid, shall be adjudged and taken, and is hereby enacted and declared to be of the same force and effect, to all intents and purposes in all courts of justice and other places, where by law an oath is or shall be allowed, authorised, directed, or required, as if such Quaker had taken an oath in the usual form; and if any person making such affirmation or declaration, shall be lawfully convicted of having wilfully, falsely, and corruptly affirmed and declared any matter or thing, which, if the same had been deposed in the usual form, would have amounted to wilful and corrupt perjury, every person so offending shall incur and suffer the like pains, penalties, and forfeitures, as by the laws and statutes of this realm are to be inflicted on persons convicted of wilful and corrupt perjury.

No. IV. 22 George II. c. 46.

Affirmation of Quakers allowed in all cases in lieu of an oath required by Act of Parliament.

Penalty on false affirming.

XXXVII. Provided nevertheless, and be it enacted, That no Quaker shall, by virtue of this Act, be qualified or permitted to give evidence in any criminal cases, or to serve on juries, or to bear any office or place of profit in the Government; any thing herein contained to the contrary notwithstanding.

Not to extend to criminal cases, &c.

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## [ No. V. ] 22 George II. c. 30.—An Act for encouraging the people known by the name of *Unitas Fratrum*, or *United Brethren*, to settle in His Majesty's Colonies in *America*.

[Moravians are allowed, in lieu of an oath, to make an affirmation, except in criminal cases.]

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## [ No. VI. ] 13 George III. c. 63.—An Act for establishing certain regulations for the better management of the affairs of the *East India* Company, as well in *India* as *Europe*.

13 George III. c. 63. The Chancellor, &c. may issue warrants for the examination of witnesses in India.

XLII. AND be it further enacted by the authority aforesaid, That in all cases of proceedings in Parliament, touching any offences against this Act, or any other offences committed in *India*, it shall and may be lawful for the Lord High Chancellor, or Speaker of the House of Lords, and also for the Speaker of the House of Commons for the time being, in like manner, to issue his or their warrant or warrants to the Governor-General and Council of the said United Company's Presidency of *Fort William*, and to the Chief Justice and judges of the said Supreme Court of Judicature, or the judges of the Mayor's Court at *Madras*, *Bombay*, or *Bencoolen*, as the case may require, for the examination of witnesses; and such examination shall be returned to the said Lord High Chancellor, or Speaker of the House of Lords, or to the Speaker of the House of Commons respectively, and proceeded upon in the same manner, in all respects, as if the several directions hereinbefore prescribed and enacted in that behalf were again particularly repeated; and every such examination, returned either to the Lord Chancellor or Speaker of the House of Lords, or to the Speaker

No. VI. 13 Geo. III. c. 63.

of the House of Commons, as aforesaid, shall be deemed good and competent evidence, and shall be allowed and read in both Houses of Parliament, or either of them respectively, as occasion may require; any law or usage to the contrary notwithstanding.

## [ No. VII. ] 27 George III. c. 29.—An Act for obviating Objections to the Competency of Witnesses in certain Cases.

27 George III. c. 29. Preamble.

'WHEREAS by divers Acts of Parliament pecuniary penalties inflicted for certain offences, or parts of such penalties, are directed to be applied for or to the use of the poor of the parishes, townships, or places, within which such offences were committed: And whereas, in divers of such cases, the parishioners, or inhabitants of such parishes, townships, or places, are not admissible witnesses to prove the perpetration of such offences within such parishes, townships, or places; by reason whereof it has been found difficult to bring offenders to justice;' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *August* One thousand seven hundred and eighty-seven, the inhabitants of every parish, township, or place, shall be deemed and taken to be competent witnesses for the purpose of proving the commission of any offence within the limits of such parish, township, or place, notwithstanding the penalty incurred by such offence, or any part thereof, is or may be given or applicable to the poor of such parish, township, or place, or otherwise, for the benefit or use, or in aid or exoneration of such parish, township, or place.

From Aug. 1, 1787, the inhabitant of any place to be a competent witness to prove an offence, though the place may be benefited by the conviction of the offender, unless the penalty exceed 20*l.*

II. Provided always, and be it enacted by the authority aforesaid, That nothing in this Act contained shall extend to any action or proceeding in which the penalty or penalties to be recovered shall exceed the sum of twenty pounds.

## [ No. VIII. ] 31 George III. c. 35.—An Act to render Persons convicted of Petty Larceny competent Witnesses.*

31 George III. c. 35. Preamble.

'WHEREAS persons convicted of grand larceny are by their punishment restored to their credit as witnesses, but persons convicted of petty larceny are rendered and remain wholly incompetent to be examined as witnesses:' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* One thousand seven hundred and ninety-one, no person shall be an incompetent witness by reason of a conviction for petty larceny.

Persons convicted of petty larceny to be competent witnesses.

## [ No. IX. ] 41 George III. c. 90.—An Act for the more speedy and effectual Recovery of Debts due to his

* This Act was proposed by Lord Kenyon, and is generally quoted with his name. It is sometimes contended, that as persons convicted of grand larceny, and having received judgment, are not competent witnesses until after the punishment is complete, the same rule must, by analogy, be applied in the construction of this Act to persons convicted of petty larceny; but the express language of the Act itself, declaring that no person by reason of conviction for petty larceny shall be incompetent, will clearly not admit of that construction. I have indeed heard it argued, that as the Act only speaks of conviction for petty larceny, it does not apply to the case of judgment: but as a conviction without judgment never amounted to a disqualification, the Act, according to that construction, would be nugatory; for it does not provide for the restoration of the competence of witnesses once disqualified, but enacts generally that the disqualification shall not take place.

Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of *Great Britain* and *Ireland;* and for the better Administration of Justice within the same.—[2*d July* 1801.]

No. IX. 41 Geo. III. c. 90.

[This Act at length, *infra.*]

IX. AND for the better and more effectual proof of the statute law of the kingdoms of *Great Britain* and *Ireland*, and of *England* and *Ireland*, previous to the union of the said kingdoms, in all courts of civil and criminal jurisdiction in every part of the said United Kingdom; be it enacted, That the copy of the statutes of the kingdom of *England*, and of the kingdom of *Great Britain* since the union with *Scotland*, printed and published by the printer duly authorized to print and publish the same by his Majesty, or by any of his royal predecessors, shall be received as conclusive evidence of the several statutes made and enacted prior to the union of the kingdoms of *Great Britain* and *Ireland*, by the parliaments of *England* and *Great Britain* respectively, in all suits, actions, or prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any court of civil or criminal jurisdiction, in that part of the United Kingdom called *Ireland;* and in like manner the copy of the statutes of the kingdom of *Ireland*, made and enacted by the Parliament of the same, prior to the union of the kingdoms of *Great Britain* and *Ireland*, and printed and published by the printer, duly authorized by his Majesty, or any of his royal predecessors, to print and publish the same, shall be received as conclusive evidence of the several statutes made and enacted by the Parliament of *Ireland*, prior to the union of the kingdoms of *Great Britain* and *Ireland*, in all suits, actions, or prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any court of civil or criminal jurisdiction, in that part of the United Kingdom called *Great Britain.*

The statutes of England, and of Great Britain, printed and published by the King's printer shall be received as conclusive evidence in any court in Ireland; and the statutes of Ireland prior to the Union, so printed and published, shall in like manner be evidence in any court in Great Britain.

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[ No. X. ] 44 George III. c. 102.—An Act for the more effectual Administration of Justice in those Parts of the United Kingdom of *Great Britain* and *Ireland* called *England* and *Ireland*, by the Issuing of Writs of *Habeas Corpus ad testificandum*, in certain Cases.—[28*th July* 1804.]

[Inserted *supra*, Class IX. No. 67.]

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[ No. XI. ] 46 George III. c. 37.—An Act to declare the Law with respect to Witnesses refusing to answer.—[5*th May* 1806.] *

46 George III. c. 37.

'WHEREAS doubts have arisen whether a witness can by law refuse 'to answer a question relevant to the matter in issue, the answer-'ing of which has no tendency to accuse himself, or to expose him to 'any penalty or forfeiture, but the answering of which may establish, or 'tend to establish that he owes a debt, or is otherwise subject to a civil 'suit at the instance of his Majesty, or of some other person or persons;' Be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That a witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has

Witness cannot by law refuse to answer on the ground of subjecting himself to a suit for debt.

* This Act was occasioned by a doubt which arose on the proceedings in the impeachment against Lord Melville; there being a considerable difference of opinion amongst the judges, as to the liability of a witness to answer questions which might affect his civil interest.

No. XI.
46 Geo. III.
c. 37.

no tendency to accuse himself or to expose him to penalty or forfeiture, of any nature whatsoever, by reason only, or on the sole ground, that the answering of such question may establish, or tend to establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of his Majesty, or of any other person or persons.

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[ No. XII. ] 54 George III. c. 170.—An Act to repeal certain Provisions in Local Acts, for the Maintenance and Regulation of the Poor; and to make other Provisions in relation thereto.—[*30th July* 1814.]

54 George III. c. 170. Inhabitants not incompetent witnesses in certain cases on behalf of or against parishes.

IX. AND be it further enacted, That no inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall, before any court or person or persons whatsoever, be deemed and taken to be by reason thereof an incompetent witness for or against such district, parish, township or hamlet, in any matter relating to such rates or cesses; or to the boundary between such district, parish, township or hamlet, and any adjoining district, parish, township or hamlet; or to any order of removal to or from such district, parish, township or hamlet; or the settlement of any pauper in such district, parish, township or hamlet; or touching any bastards chargeable or likely to become chargeable to such district, parish, township or hamlet; or the recovery of any sum or sums for the charges or maintenance of such bastards; or the election or appointment of any officer or officers, or the allowance of the accounts of any officer or officers of any such district, parish, township or hamlet; any law, usage, statute or custom to the contrary in any wise notwithstanding.

[At length in Vol. VIII.]

# PART IV.

## CLASS XI.

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### *Costs.**

### [No. I.] 6 Edward I. (statute of Gloucester) c. 1.—Several Actions wherein Damages shall be recovered.

6 Edward I. c. 1.

"WHEREAS heretofore damages were not awarded in assizes of "*novel disseisin*, but only against the disseisors:" 'it is provided, 'That if the disseisors do aliene the lands, and have not whereof there 'may be damages levied, that they to whose hand such tenements shall 'come, shall be charged with the damages, so that every one shall 'answer for his time. It is provided also, That the disseisee shall recover 'damages in a writ of entry, upon *novel disseisin* against him that is 'found tenant after the disseisor. It is provided also, That where 'before this time damages were not awarded in a plea of *mortdauncestor* '(but in case where the land was recovered against the chief lord) that 'from henceforth damages shall be awarded in all cases where a man 'recovereth by assize of *mortdauncestor*, as before is said in assize of '*novel disseisin*. And likewise damages shall be recovered in writs of '*cosinage, aiel*, and *besaiel*.'

The alienee of a disseisor shall be charged with damages.

Damages in *mortdauncestor*.

Damages in *cosinage, aiel, besaiel.*

"II. And whereas before time damages were not taxed, but to the "value of the issues of the land;" "it is provided, That the demandant 'may recover against the tenant the costs of his writ purchased, 'together with the damages abovesaid. And this Act shall hold place 'in all cases where the party is to recover damages. (1) And every

Where damages shall be recovered, there costs also.

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* The notes upon this subject are extracted from the accurate and judicious treatise of Mr. Serjeant Hullock. For costs in replevin, error, actions against justices of peace, and other officers, see those respective titles. For costs in cases where a defendant pleads several matters, statute 4 Anne, c. 16. st. 5. *ante*, II. 23. For costs in slander, 21 Jac. I. c. 16. *ante*, Class 6. No. 4. For costs in actions on judgments, statute 43 George III. c. 46. *ante*, Class 3. No. 36. For costs in prosecutions for felony, and proceedings before justices of peace, stat. 18 Geo. III. c. 19. *post* VI. IX. 1. For costs in cases of information and *certiorari*, *post* P. V. Title *Criminal Proceedings*.

(1) See Hullock, c. i. sec. 1.

In Pilfold's case, 10 Co. 116. it was laid down, that in actions where a man, either before or by the statute of Gloucester, should not recover damages, if afterwards another statute in a new case give damages, then the plaintiff (unless costs are expressly given by such later statute) should not recover costs. And this rule was assented to by three of the judges of the Common Pleas, (Willes J. *contra*) Witham *v.* Hill, 2 Wels. 91. Barnes, 151. According to Lord Kenyon's note of this case, cited in Creswell *v.* Houghton, 6 T. R. 355. Willes said—"I agree that when a statute subsequent to the statute of Gloucester gives an action where no damages were sustained before, the plaintiff is not entitled to costs; but in all cases where a party sustains a damage, and a subsequent statute gives the remedy, the party is entitled to costs." In the case of Witham *v.* Hill, it was ruled, that the plaintiff was entitled to costs in an action against the hundred on the Riot Act, 1 Geo. I. st. 2. c. 5. (the judges who admitted the authority of Pilfold's case thinking, that the particular case fell within the rule, as damages might have been before recovered against the particular trespassers). In Gunthorn *v.* The hundred of Theale, 3 Bur. 1723. it was incidentally held, that the plaintiff was entitled to costs in an action against the hundred for maliciously setting fire to a barn, (which being previously a felony, does not admit of the distinction last mentioned) Some doubts were thrown upon the authority of that case, in Wilkinson *v.* Abbot, Cowp. 367; but the doctrine was established in Wilkinson *v.* The hundred of Calesworth, 1 T. R. 71. Costs are allowed on the statute of Hue and Cry; Penkney *v.* Inhabitants of East Hundred, 2 Saund. 379. In Creswell *v.* Houghton, 6 T. R. 355. it was ruled that the plaintiff was entitled to costs in an action on 23 Henry VI. c. 9. against the sheriff, for refusing to take bail, on the ground that the plaintiff might have recovered damages before the statute of Gloucester, provided he took the proper means to compel the sheriff to accept bail; namely, by suing out a writ of mainprize. Lord Kenyon, in referring to the cases of *quare impedit*, and actions for tithes,

No. I.
6 Edward I.
c. 1.

'person from henceforth shall be compelled to render damages, where 'the land is recovered against him upon his own intrusion, or his own 'act.'

## [ No. II. ] 23 Henry VIII. c. 15.—An Act that the Plaintiff being nonsuited, shall yield Damages to the Defendants in Actions personal, by the Discretion of the Justices.

23 Henry VIII. c. 15.

BE it enacted by the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if any person or persons, at any time after the Feast of the *Purification* of our Lady, in the twenty-third year of the reign of our Sovereign Lord King *Henry* the Eighth, commence or sue in any court of record, or elsewhere in any other court, any action, bill, or plaint, of trespass upon the statute of King *Richard* the Second, made in the fifth year of his reign, for entries into lands and tenements, where none entry is given by the law, or any action, bill, or plaint of debt or covenant, upon any especialty made to the plaintiff or plaintiffs, or upon any contract supposed (1)

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observes, that in those the party had no right of action before the statute of Gloucester: *Quare impedit* was considered as a mere spiritual concern; so tithes could not be recovered in the imperial courts before the reign of Edward VI. In Ward *v.* Snell, 1 H. B. 10. it was ruled that the plaintiff was entitled to costs in an action on the Habeas Corpus Act, 31 Ch. II. c. 2. for the penalty of 100*l.* for not delivering a copy of a warrant of commitment. So, in Tyte *v.* Glode, 7 T. R. 267. in an action against the sheriff, upon 29 Eliz., for taking more than is allowed upon an execution; and it was there laid down, upon the authority of the cases above cited, that when, by any Act since the statute of Gloucester, an action is given to the *party grieved*, he is entitled to costs, though he had no remedy before such Act; and see the Mayor, &c. of Plymouth *v.* Werring, Willes, 440. There are no costs upon an action at the suit of a common informer, who is not a party grieved, unless expressly given; see Shore *v.* Maisten, 1 Salk. 206. Nor in a traverse of an inquisition; Rex *v.* Inhabitants of Glastonbury, 2 Str. 1069. Where a statute gives double or treble damages, the costs are also doubled or trebled; Hullock.

As to costs in actions upon gaol grants; see 43 Geo. III. c. 46. *ante*, Class 3.

There are no costs in actions purely real; but damages, and consequently costs, may be carried in actions of a mixed nature, at assize; 2 Inst. 286.

As to *scire facias*, prohibition, waste, debt for not setting out tithes; see 8 & 9 W. III. c. 11. *post*.

(1) It is well known that persons suing as executors or administrators are not liable to costs; the reason generally assigned for which is, that they may be ignorant of the true circumstances of the case; but in Tattersall *v.* Groote, 2 B. and P. 253, Lord Eldon says, "that the doctrine seems to be founded on this Act, of which all the cases are an exposition. Attending to the language of the Act, perhaps we may be authorized to say, that the sound principle on which the exemption of executors and administrators rests, is not the degree of ignorance under which they may be supposed to lie, but that the exemption founds itself on the description of the words contained in the statute on which costs are to be paid the words are—'Any action, &c. upon any especialty made to the plaintiff or plaintiffs, or upon any contract supposed to be made between the plaintiff, &c.' The statute of 4 Jac. I. does not carry the matter further: the subsequent allusion is to 'any offence or wrong personal, *immediately* supposed, &c.'"

Any general statutes giving costs to defendants are held not to apply to actions brought by executors, as was ruled with respect to a plea of bankruptcy, on 5 Geo. II. c. 30. § 7. in Martin *v.* Norfolk, 1 H. B. 528.

The exemption is of very great hardship in its principle and operation: however free from censure an executor or other person may be who brings an action under a mistaken view of the circumstances of the case, there is no reason for subjecting the other party, who is equally free from censure, to the expense arising from such mistake; and there would be nothing inequitable in requiring those on whose behalf the experiment is to be made, to include the indemnity of a defendant from costs to which he is wrongfully subjected in the calculation of success or failure. In point of fact, great extortion is frequently committed, by bringing unfounded or experimental actions, in the expectation of submission to an unjust or questionable demand being preferred to a successful but expensive resistance.

The cases respecting an executor's liability to or exemption from costs are very numerous, and are fully collected in Mr. Hullock's Treatise, chap. iii. s. 1.

The general conclusion from all the cases is, that the exemption depends upon the question whether the plaintiff was obliged to sue as executor or not; and that if he could sue *in proprio jure*, he is not protected from payment of costs by naming himself executor.

to be made between the plaintiff or plaintiffs, and any other person or persons, or any action, bill, or plaint of detinue of any goods or chattels, whereof the plaintiff or plaintiffs shall suppose that the property belongeth to them, or to any of them, or any action, bill, or plaint of account, in the which the plaintiff or plaintiffs suppose the defendant or defendants to be their bailiff or bailiffs, receiver or receivers of their

No. II.
23 Hen. VIII.
c. 15.

In several cases it is laid down, that the rule depends upon the question whether the money recovered would be assets; but that doctrine is contrary to the entire current of modern authorities, as is evident from the cases where an executor is subjected to costs on account of trover in the testator's life-time, and conversion after his death; as to which see Bolland *v.* Spencer, 7 T. R. 358; Hobbes *v.* Smith, 10 E. 293. So if an executor sue as such for money received by the defendant since the testator's death, for his use, as executor; Goldthwaite *v.* Petric, 5 T. R. 234. In the marginal abstract of the modern case of Thompson *v.* Slent, 1 Taunt. 322. it is stated, that if the money recovered would be assets, the executor, suing as such, is not liable to costs; but there is nothing in the decision itself to warrant that representation. The case arose on a special demurrer for a misjoinder of counts on pro mises to the testator in his life-time, and an *insimul computasset* with the plaintiff, and his wife, as executrix. The question of costs being incidentally mentioned, the court referred to Eaves *v.* Mocato, as cited in Jenkins *v.* Plume, 1 Salk. 207. in which it was held that, upon an *insimul computasse it* with an executor, the defendant was not entitled to costs, because the promise begot no new cause of action, but only ascertained the old. They also referred to Ball *v.* Palmer, T. Jon. 47. upon a similar count, when it was determined, (as was formerly held) that as the money, if recovered, would be assets, no costs were payable. But this incidental reference to a doctrine opposed by so many modern decisions, and which was in no respect necessary to the decision of the case, cannot be regarded as an authority of any consequence.

There are different cases in which it is settled, that an executor is not liable to costs in an action for breach, in his own time, of a covenant with or promise to the testator; Tattersall *v.* Groote, 2 B. and P. 254; Cooke *v.* Lucas, 2 E. 395; which cases fall within the established principle, that the plaintiff must necessarily name himself executor. The cases on counts of *insimul computasset* are referable to the same principle; for it is clear, that upon a general count of that description, as founded upon an account between the plaintiff and defendant, the former could not recover upon an acknowledgment of money due to his testator.

In Cockerill *v.* Kynaston, 4 T. R. 277. it is reported to have been decided, that if an executor declare on a trover and conversion in the testator's life-time, and also on a trover and conversion after his death, the evidence offered being only applicable to the first count, and he be nonsuited, he is not liable to pay costs. But in the subsequent case of Bolland *v.* Spencer, 7 T R 358 Lord Kenyon said that there must be some mistake in the case. He said—"The rule in favour of executors is already sufficiently extensive. We all of us remember a variety of actions improperly brought by them, and which would not, perhaps, have been brought, had it not been for the privilege which they have of being exempt from paying costs." Clearly nothing could be less satisfactory than the supposed decision in Cockerill *v.* Kynaston. If a party gives no evidence, he is nonsuited generally; and it would be the height of absurdity if he could exempt himself from the consequences of such nonsuit by giving evidence which amounted to nothing, in support of particular counts: and referring to Grimstead *v.* Shirley, 2 Taunt. 116, I find it said by Lawrence J.—"How can it depend on the facts which appear at the trial? Suppose the cause is called on, and no evidence is given, but the plaintiff, instead of appearing, submits to a nonsuit, we cannot see what the facts were. The plaintiff must take care to have his verdict on the right count; and then if the count gives costs where it ought not, it is error, but the court can only look at the record." The decision in Grimstead *v.* Shirley is upon the old case of two counts in trover, one stating a conversion before and the other after the death of the testator, and upon nonsuit costs given against the plaintiff. The marginal abstract, that where a plaintiff executor adds one count as executor, stating a cause of action for which he might declare in his own right, if he is nonsuited, he shall be liable to costs, though not stated in those general terms in the body of the case, is evidently the fair result of all the authorities upon the subject.

An executor is entitled to exemption, although suing for the benefit of others, who would equally be entitled to maintain the action in their own name: for instance, the executor of a person who effected a policy of insurance, suing on behalf of the persons for whose benefit it was effected; Wilton *v.* Hamilton, 1 B. and P. 445. But where an executor lent his name to other persons, under circumstances which were held to be an abuse of the practice of the court, the court of C. B. made an order upon him for payment of costs: the costs were not made part of the judgment, which would have been error on the record; Comber *v.* Hardcastle, 3 B. and P. 115.—The following note was subjoined to the case of Eaves *v.* Mocato, in the sixth edition of Salkeld, Vol. 1. p. 314, respecting the cases where an executor is or is not liable to costs upon interlocutory proceedings. In Eaves *v.* Mocato it was said by the court, that if an executor will not go on to trial according to his notice, he shall pay the costs of suit.

"An executor or administrator shall pay costs if he be guilty of any laches or delay in

No. II. 23 Hen. VIII. c. 15.

manor, mese, money, or goods, to yield account, or any action, bill, or plaint upon the case, or upon any statute, for any offence or wrong personal immediately supposed to be done to the plaintiff or plaintiffs, and the plaintiff or plaintiffs in any such kind of action, bill, or plaint, after appearance of the defendant or defendants, be nonsuited, or that any verdict happen to pass, by lawful trial, against the plaintiff or plaintiffs in any such action, bill, or plaint, that then the defendant or defendants in every such action, bill, or plaint, shall have judgment to recover his costs against every such plaintiff or plaintiffs; and that to be assessed and taxed by the discretion of the judge or judges of the court, where any such action, bill, or plaint shall be commenced, sued, or taken; and also that every defendant in such action, bill, or plaint, shall have such process and execution for the recovery and having of his costs against the plaintiff or plaintiffs, as the same plaintiff or plaintiffs should or might have had against the defendant or defendants, in case that judgment had been given for the part of the said plaintiff or plaintiffs in any such action, bill, or plaint.

He that sueth in *forma pauperis* shall be otherwise punished.

II. Provided alway, That all and every such poor person or persons being plaintiff or plaintiffs in any of the said actions, bills, or plaints, which at the commencement of their suits or actions be admitted by discretion of the judge or judges, where such suits or actions shall be pursued or taken, to have their process and council of charity, without any money or fee paying for the same, shall not be compelled to pay any costs by virtue and force of this statute, but shall suffer other punishment, as by the discretion of the justices or judge, afore whom such suits shall depend, shall be thought reasonable; any thing afore rehearsed to the contrary hereof notwithstanding. (1)

## [ No. III. ] 24 Henry VIII. c. 8.—An Act where Defendants shall not recover any Costs.

24 Henry VIII. c. 8.

'BECAUSE as well many recognizances, obligations, indentures, and 'other specialties, as also many contracts heretofore have been 'taken and made between divers persons being of the King's most 'honourable council, and others his subjects, and by and between other 'persons, to the use and behoof of our said Sovereign Lord the King, 'for great sums of money; then being to his grace due, and for his pro-'visions and other causes; for which debts, actions by the laws of this 'realm be to be commenced, sued and prosecuted to the King's use, by 'and in the name and names of the person or persons to whom the said 'recognizances, obligations, and other specialties were made, or by

the progress of a cause; Hullock, 189. R. that they are liable to costs on judgment of *non-pros.*; Hawes *v.* Saunders, 3 Bur. 1584; Lamley *v.* Nichols, Cas. Pr. C. B. 14; [Higgs *v.* Parry, 6 T. R. 654.] In Nunez *v.* Modigliani, H. Bl. 217, Costs were paid by an administrator for withdrawing his record before trial; but that point was not the question in dispute; *vide* Hullock's observations on the case, p. 192. As leave to discontinue is in the discretion of the court, it is given with or without costs, according to the circumstances of the case, and will depend upon whether there is laches or delay, or it is a fair transaction. Where an executor in an action upon a bond against an heir, discovered just before the trial was to come on that the estate which he relied upon as assets was conveyed by the ancestor, he was allowed to discontinue without costs, undertaking not to bring a fresh action without leave of the court; Bennett *v.* Goker, 4 Bur. 1927; *vide* also Baynham *v.* Mathews, 2 Str. 871. But where one executor brought the action alone, there being others, he had only leave to discontinue upon payment of costs; Harris *v.* Jones, 3 Bur. 1451; 1 Bl. 451. [So where the executors first brought an action against one of three obligors, and were nonsuited on a plea of usury, and afterwards against a second, which went off *pro defectu juratorum*, and then brought an action against all, in order to exclude the evidence of one upon the usury, and moved to discontinue the second; Melhursh *v.* Maunder, 2 N. R. 72.] In Ogle *v.* Moffat, Barnes, 133, an executor was excused from costs for not going on to trial, his witnesses being prevented by accident from attending, and he being guilty of no wilful default. On a nonsuit executors do not pay costs; Bigland *v.* Robinson, 3 Salk. 105; nor on judgment, as in case of a nonsuit; *per cur.* in Bennet *v.* Coker. [Ruled accordingly; Booth *v.* Holt, 2 H. B. 277."]

(1) See Hullock, ch. iii. sec. 3.

'those to whom the said contracts were made:' Be it therefore ordained and enacted by authority of this present Parliament, That albeit that the plaintiff or plaintiffs be or shall be nonsuited in any whatsoever action, suit, bill or plaint, commenced, or to be commenced, sued, or to be sued, to the use of our said Sovereign Lord the King, his heirs or successors, kings of *England*, or that it shall happen any verdict to pass against any such plaintiff or plaintiffs, in any action, suit, bill or plaint, sued or to be sued, to the king's use; the defendant or defendants shall not recover any costs against any such plaintiff or plaintiffs; any Act or statute made in this present Parliament, or any other thing to the contrary being in any wise notwithstanding.

No. III. 24 Hen. VIII. c. 8.

In what case the defendant shall not recover costs.

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## [ No. IV. ] 8 Elizabeth, c. 2.—An Act for the avoiding of wrongful Vexation touching the Writ of *Latitat*.

'WHERE divers persons of their malicious minds, and without any 'just cause, do many times cause and procure others of the 'Queen's Majesty's loving subjects, to be very much molested and 'troubled by attachments and arrests made of their bodies, as well by 'process of *latitat*, *alias*, and *pluries capias*, sued out of the court com- 'monly called the King's Bench, as also by plaint, bill or other suit in 'the court commonly called the Marshalsea, and within the city of '*London*, and other cities, towns corporate, and places where any liberty 'or privilege is to hold pleas of debt, trespass, and other personal 'actions and suits: And when the parties that be arrested or attached 'are brought forth to answer to such actions and suits as should be 'objected against them, then many times there is no declaration or 'matter laid against the parties so arrested or attached, whereunto they 'may make any answer; and so the party arrested is very maliciously 'put to great charges and expenses, without any just or reasonable 'cause: And yet nevertheless hitherto, by order of the law, the party 'so grieved and vexed could never have any costs or damages to him to 'be judged or awarded for the said unjust vexation and trouble:'

8 Elizabeth, c. 2.

The defendant shall recover costs and damage, where the plaintiff doth delay or discontinue his suit, or is nonsuit, &c.

The inconvenience of pursuing of suits upon malice, without just cause.

II. For remedy whereof, be it enacted and ordained by the authority of this present Parliament, That when and as often as any person and persons, after the first day of *January* next coming, shall sue forth, or by any means cause or procure to be sued forth, of the said court commonly called the King's Bench, any of the writs or process before mentioned, against any person or persons which upon the same writ or writs shall happen to be arrested, or which shall appear upon the return of any of the said writs or process, and shall put in his or their bail or bails to answer such suit as shall be objected against him, according to the common order of the court; that then in every such case, if the party or parties at whose suit, means or procurement, the same writ, writs or process was obtained or sued forth, do not within three days next after such bail had and taken, put into the same court his or their declaration against the same party or parties against whom such writ or process hath been or shall be sued; or if after declaration had and put into the same court, the plaintiff in such case shall not prosecute the same with effect, but shall willingly and apparently to the same court suffer his or their said suit to be delayed; or shall after declaration so had, suffer the same suit to be discontinued, or otherwise shall be nonsuit in the same; that then in every such case, the judges of the said court for the time being shall by their discretions from time to time, as they shall see or perceive any such default to be in the party or parties at whose suit, means or procurement such writ or process was sued forth, award and judge to every such person and persons so arrested, vexed, molested or troubled by such writs or suit, his and their costs, damages and charges by any means sustained by occasion of any such writs, process, arrests or suits, taken, sued or had against him, to be paid by such person or persons that so doth or shall cause or procure any such writs or process to be sued forth, as is aforesaid.

Costs, damages and charges shall be awarded, where the plaintiff doth delay his suit, doth discontinue, or is nonsuit, in the King's Bench.

No. IV.
8 Elizabeth, c. 2.

A remedy if the plaintiff do delay, discontinue, or is nonsuit in the Marshalsea, or any city or town corporate.

III. And be it further enacted by the authority aforesaid, That if any person or persons shall after the said first day of *January* cause or procure any other person or persons to be attached or arrested to answer to any bill, plaint, action or suit, in the said court of the Marshalsea, or in any court within the said city of *London*, or in any city, borough, town corporate or other place or places, where any liberty or privilege is used to hold plea in any action or actions personal, and do not, in all courts having their continuance *de die in diem*, within three days next after such time as the party defendant or defendants shall be bailed, or otherwise appear in court, by force of any arrest or attachment had and returned, and in all other courts, at the next sessions or court to be holden after such arrests or attachments, and appearance of the party defendant or defendants, whereas the said party defendant or defendants shall be compelled or ought to appear, (unless a further day shall be specially given by the discretion of the court from whence any precept, process or attachment shall be awarded) put and exhibit his bill or declaration against such person or persons, as so by his suit and means shall be attached or arrested, into such court where the party by such attachment or arrest is compelled or ought to appear. Or if any such person or persons, at whose suit or means any such attachment or arrest of any person or persons shall be so had and made, after his declaration, bill or plaint exhibited, do not from thenceforth prosecute the same his suit with effect or shall suffer the same to be discontinued, or shall after be nonsuit in the same, or willingly and apparently to the same court, shall for vexation of the defendant in such suit delay the same suit: That then in every such case the judge or judges of every such court before whom any person or persons shall be so sued, molested or troubled by occasion or mean of such attachment or arrest, or by such suit or suits, shall forthwith by his or their discretion from time to time, as he or they shall see or perceive any such default or delay in the party that caused or procured any such attachment or arrest to be had, award and judge to every such person or persons, which after the said first day of *January* shall be so attached, arrested, molested, vexed or troubled, his costs, damages and charges, by any means sustained by occasion of any such attachment, arrest or suit, so had and taken against him, to be paid by such person or persons that so doth or shall cause or procure any such attachment or arrest to be so had or made.

The penalty for arresting of any person at the suit of another not knowing thereof.

IV. And if any person or persons at any time after the first day of *January* shall, by any way or mean, maliciously, or for vexation and trouble, cause or procure any other person or persons to be arrested, or attached to answer in any the courts or places aforesaid, at the suit or in the name of any person or persons, where indeed there is no such person or persons known, or without the assent, consent or agreement of such person or persons, at whose suit or in whose name such arrest or attachment is or shall be so had or procured, that then every such person or persons, that shall so cause or procure any such arrest or attachment of any other person or persons to be had or made for vexation or trouble, as is aforesaid, and shall thereof be convicted or lawfully accused by indictment, presentment, or by the testimony of two sufficient witnesses or more, or other due proof, shall for every such offence by him or them committed, done or procured, have and suffer imprisonment of his or their body or bodies by the space of six months, without bail or mainprize And before he or they shall be delivered out of prison, shall pay unto the party or parties so arrested or attached by his or their means or procurement, treble the costs, charges, damages and expenses that he or they shall be put unto by reason or occasion of such arrest or attachment so had; and shall also forfeit and pay unto such person or persons, in whose name or at whose suit he or they shall so procure such arrest or attachment to be had or made, if then there shall be any such person known, the sum of ten pounds for every such offence.

V. And be it further enacted by the authority aforesaid, That every

person and persons to whom any costs, charges, damages, forfeiture or payment of any sum or sums of money by authority of this Act shall be awarded, judged, or forfeited, shall and may at all times hereafter have his or their remedy for the recovery thereof, by action of debt, bill or plaint, in any court of record against such person or persons, their heirs, executors, or administrators, as should or ought to pay the same by virtue or force of this Act; in which action, bill, or plaint, no essoign, protection, or wager of law shall be admitted or allowed to any the defendant or defendants in the same.

No. IV. 8 Elizabeth, c. 2.

A remedy to recover costs and damages awarded.

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## [ No. V. ] 43 Elizabeth, c. 6.—An Act to avoid trifling and frivolous Suits in Law in her Majesty's Courts in *Westminster*.

43 Elizabeth, c. 6.

'FOR avoiding the infinite number of small and trifling suits commenced or prosecuted against sundry her Majesty's good and loving subjects in her Highness courts at *Westminster*, (which by the due course of the laws of this realm ought to be determined in inferior courts in the country) to the intolerable vexation and charge of her Highness subjects;' Be it enacted by the authority of this present Parliament, If any sheriff, undersheriff or other person, having authority or taking upon him to break writs after forty days next after the end of this Session of Parliament, do make any warrant for the summons of any person, as upon any writ, process, or suit, or for the arresting or attaching of any person or persons by his or their body or goods, to appear in any her Majesty's courts at *Westminster*, or elsewhere (not having before that the original writ or process warranting the same), That then upon complaint thereof made to the justices of assize of the county where the same offence shall be committed, or to the judges of the court out of which the process issued, not only the party that made such warrant, but all those that were the procurers thereof, shall be sent for before the same judges or justices, by attachments or otherwise, as the same judges or justices shall think good and allow of, and be examined thereof upon their oaths: And if the same offence be confessed by the same offenders, or proved by sufficient witnesses, to the satisfaction of the same judges or justices, That then the same judges or justices that shall so examine the same, shall forthwith by force of this act commit every the same offenders to the gaol of the county or court where the same shall be examined; there to remain without bail or mainprize until such time as they amongst them have fully satisfied and paid unto the party grieved by such warrant, not only the sum of ten pounds of lawful *English* money, but also all such costs and damages as the same judges or justices shall set down, that the same party hath sustained thereby, and withal twenty pounds a-piece for their offence to her Majesty.

Penalty of a sheriff, &c. arresting or summoning without warrant.

Summoning or arresting without warrant.

II. And be it further enacted by the authority aforesaid, If upon any action personal to be brought in any her Majesty's Courts at *Westminster*, not being for any title or interest of lands, nor concerning the freehold or inheritance of any lands, nor for any battery, it shall appear to the judges for the same court, and so signified or set down by the justices before whom the same shall be tried, that the debt or damages to be recovered therein in the same court shall not amount to the sum of forty shillings or above, That in every such case the judges and justices before whom any such action shall be pursued, shall not award for costs to the party plaintiff any greater or more costs than the sum of the debt or damages so recovered shall amount unto, but less at their discretions. This Act to endure to the end of the first session of the next Parliament. [3 Car. 1. c. 4. continued until the end of the first session of the next Parliament, and farther continued by 16 Car. I. c. 4.] (1)

No costs shall be awarded in a personal action brought for a sum not amounting to 40*s*.

This clause extended to the counties palatine by 11 & 12 W. 3. c. 9.

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(1) By stat. 11 & 12 W. III. c. 9. s. 1., this provision is extended to the counties palatine, and Wales.—This Act does not deprive a plaintiff of full costs, unless there is a certificate

No. VI. 4 James I. c. 3.

## [No. VI.] 4 James I. c. 3.—An Act to give Costs to the Defendant upon a Nonsuit of the Plaintiff, or Verdict against him.*

Cases wherein by the statute made 23 H. 8. c. 15. the defendant shall recover his costs.

'WHEREAS in the three and twentieth year of the reign of 'King *Henry* the Eighth, of famous memory, a good and profit-'able law was made, whereby it was enacted, That in cases where the 'plaintiff in any action, bill or plaint of debt, trespass upon the case, 'detinue, account, and in some other actions therein especially men-'tioned, should become nonsuit, or a verdict should be had against the 'said plaintiff; that then in such cases the defendant should have judg-'ment to recover his costs against every such plaintiff, as by the said 'law appeareth: which law hath been found to be very good and 'beneficial for the Commonwealth, and thereby many have been dis-'couraged from bringing frivolous and unjust suits, because such 'parties are to make recompence to the parties unjustly vexed, for the 'said unjust vexations.

Several cases wherein the defendant shall recover his costs against the plaintiff.

'II. And forasmuch as actions of trespass, and actions of *ejectione* '*firmæ*, and many other actions real and personal are within the same 'mischief, as the said other actions were at the common law, and 'yet were omitted out of the provision of the said law:' For remedy whereof, Be it enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if any person or persons any time after the end of this present session of Parliament, shall commence or sue in any court of record, or in any other court, any action, bill or plaint of trespass, or *ejectione firmæ*, or any other action whatsoever, wherein the plaintiff or demandant might have costs (if in case judgment should be given for him) and the plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint, after appearance of the defendant or defendants, be nonsuited, or that any verdict happen to pass by any lawful trial against the plaintiff or plaintiffs, demandant or demandants, in any such action, bill or plaint, that then the defendant and defendants, in every such action, bill or plaint, shall have judgment to recover his costs against every such plaintiff and plaintiffs, demandant and demandants, to be assessed, taxed and levied in manner and form as costs in the said recited actions are to be assessed, taxed and levied in and by the said law of the three and twentieth year of King *Henry* the Eighth. Coke Ent. 29.

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from the judge. The first instance of such certificate was in White *v.* Smith, 17 Geo. II. cited 2 Str. 1232.; 1 Wils. 94. In that case the action was for taking away sand on Hounslow Heath, and Willes C. J. having certified that the damages found (being under 40*s.*) were the real damages to be recovered, it was ruled to be a case within the Act, and not within the exception of actions for any title or interest in land. The Act extends to an action for disturbing a way or common, which may be against a mere wrong doer, without any question of right; Edmondson *v.* Edmondson, 8 E. 294.; Kyleman *v.* Patrick, 1 Freem. 214: to trespass, where the defendant justified for a distress for rent, under the authority of the landlord, and the issue was on the authority which is collateral to the right; Howard *v.* Cheshire, Sayer Rep. 250.

The Act also extends to trespass for assaulting the plaintiff, stopping his waggon, and taking away his cart rope; the defendant having justified taking the rope for toll, after demand and refusal, and the issue being on the demand and refusal; Walker *v.* Robinson, 1 Wils. 93; 2 Str. 1232: to assault, battery, and false imprisonment, there being no certificate of actual battery to take the case out of 22 & 23 Chas. II. in favour of the plaintiff; Emmett *v.* Lyne, 1 N. R, 255; Wiffin *v.* Kinneard, 2 N. R. 471: to assumpsit, where, upon plea of tender, the plaintiff has recovered more than the sum tendered; Bartlett *v.* Robins, 2 Wils. 258: to trespass *vi et armis*, for beating a dog; Dand *v.* Sexton, 3 T. R. 37; (in that case it was contended, that the statute did not extend to actions which could not be brought in inferior courts): to actions on statutes giving the plaintiff damages with costs of suit; Williams *v.* Miller, 1 Taunt. 400.

If the defendant pleads the general plea, and several special pleas: upon general verdict for the plaintiff where if judge certifies, the plaintiff is not entitled to costs of the special pleas under 4 Ann. c. 16. s. 5., [ante P. II. Cl. I. No. 23]; Howard *v.* Cheshire, Say. Rep. 260; Richmond *v.* Johnson, 7 E. 583.

The certificate may be granted any time after the trial; Holland *v.* Gore, Sayer, Costs, 18, cited 3 T. R. 38 n.

* See Hullock, c. 2. sect. 1.

## [No. VII.] 22 and 23 Charles II. c. 9.—An Act for laying Impositions on Proceedings at Law.

No. VII. 22 & 23 C. II. c. 9.

CXXXVI. AND for prevention of trivial and vexatious suits in law, whereby many good subjects of this realm have been and are daily undone, contrary to the intention of an Act made in the three and fortieth year of Queen *Elizabeth*, for avoiding of infinite numbers of small and trifling suits commenced in the courts at *Westminster*; Be it further enacted, for making the said law effectual, That from and after the first of *May* aforesaid, in all actions of trespass, assault and battery, and other personal actions, (1) wherein the judge at

(1) Hullock, c. 1. sect. 3.

This Act would seem in its purview to be sufficiently general to comprehend actions of every description, and not to be confined to the particular actions of assault and battery, and trespass *quare clausum fregit*, upon which, in particular cases, certificates to entitle the plaintiff to full costs, are authorized by a subsequent part of the clause. And as a matter of reasoning, it is very difficult to admit that the operation of a general provision shall be restrained, because an exception is introduced which can only apply to some particular part of the subject within the scope of such provision. The propriety of such a restrictive construction is jointly questioned by Willes, C. J. in Milburne *v.* Read, 3 Wils. 325; and in the works of Sergeant Hullock: but the opposite doctrine has been long completely established. The doctrine, that where there is a special plea of justification the plaintiff shall be entitled to full costs without certificate, however firmly settled, seems also to be contrary to the intention and true construction of the Act; as even in the excepted cases the action itself may be very frivolous, and the most effectual way of preventing suits of that description, is to subject the costs to the discretion of the judge. In cases of assault, a person who has a reasonable probability of establishing a justification is prevented from making the attempt by the hazard of liability to full costs in case of failure; and I apprehend, that it would not be beneath the attention of the Legislature to provide that full costs should not be allowed in actions of assault and battery without a judge's certificate, notwithstanding any special plea of justification.

The following note as to the actions in which the statute is or is not applied, was subjoined by the editor to the case of Ven *v.* Phillips, 1 Salk. 207, in which it was ruled, that the plaintiff was entitled to full costs in an action for taking, driving and wounding sheep.—The additions are, as in other instances of quotations from the Editor's former publications, denoted by brackets.

"According to the construction which has, by an uniform train of decisions, been applied to the statute 22 and 23 Cha. II. c. 9. the doctrine of this case (*viz.* that the plaintiff is by that statute deprived of full costs where the damages recovered are under 40s., in those actions only wherein a certificate of an actual battery, or the title of the land coming in question, can be given) is fully established. The principal questions relative to this subject must arise where the injury complained of is of a mixed nature; or distinct injuries are complained of in the same declaration, on some of which such certificate can be granted, and on others not. The material distinction seems to be, that where the complaint that would alone carry costs, is a material and substantial part of the case, and upon establishment of which the plaintiff is entitled to a verdict, he is not excluded from full costs by its being joined with a complaint for an assault or trespass. But where it is only a collateral circumstance, a matter of aggravation or a mode of committing the other injury, the costs will be no more than the damages. Thus, full costs are given in an action for breaking the plaintiff's close, and *impounding his cattle;* Barnes *v.* Edgard, 3 Mod. 39. So where one count was for a trespass on land, and another for *carrying away a hog;* Knightly *v.* Buxton, Sayer on *Costs*, 39: for a trespass in a house, and *consuming victuals;* Smith *v.* Clarke, 2 Str. 1130: for entering the plaintiff's close and cutting his cable, *whereby the plaintiff lost the use of his boat*, Haines *v.* Hughes, Comb. 324: entering his close, and *driving his sheep or bull;* Arnold *v.* Thompson, Barnes, 119; Thompson *v.* Berry, 1 Str. 551: bringing diseased cattle into the plaintiff's close, *whereby the plaintiff's cattle were infected;* Anderson *v.* Buckton, 1 Str. 192: in trespass and assault for *criminal conversation;* Batchelor *v.* Bigg, 2 Bl. 854; 3 Wils. 319: Assault and *false imprisonment;* 1 Bac. Ab. 515; [for beating a servant *per quod servitium amisit;* Peak *v.* ———, 3 Keb. 184]: assault and battery, and treading upon and *spoiling* the plaintiff's *coals*, and *spoiling* his *standard and roller;* Milbourne *v.* Read, Barnes, 134, cited 3 Wils. 322. Where a double injury is charged, as in the preceding cases, the jury may find for the plaintiff as to the assault or trespass, and for the defendant as to the other cause of action, in which cases there are no more costs than damages; Gilb. Eq.-Rep. 199; 1 Bac. Ab. 514; in marg. Hullock, 84, note; Beck *v.* Nichols, 1 Str. 577; Cotterill *v.* Jolly, 1 T. R. 655: or where there is no evidence of such other cause, a general verdict will be amended by the judge's notes; Back and Hullock *ubi supra.* In the following cases it has been held that the plaintiff is not entitled to full costs: assaulting the plaintiff and *disturbing* him in his quiet *possession*, &c.; Boiture *v.* Woolrick, 1 Ld. Raym. 566: assaulting the plaintiff, and *striking his horse*, by which he was

No. VII. 22 & 23 C. II. c. 9.

the trial of the cause shall not find and certify under his hand upon the back of the record, that an assault and battery was sufficiently proved by the plaintiff against the defendant, (1) or that the freehold or title of the land mentioned in the plaintiff's declaration was chiefly in question, (2) the plaintiff in such action, in case the jury shall find the

lessened in value; 1 Str. 624; [Banister *v.* Fisher, 1 Taunt. 357 :] breaking the plaintiff's house, and keeping *him out of possession*, whereby he was put to great expense, and lost the use of it; Blunt *v.* Milher, 1 Str. 645: [throwing stones against the plaintiff's windows, and breaking the glass: Adlem *v.* Grinaway, 6 T. R. 281: pulling down, *burning and consuming* by fire the plaintiff's fence, there being a justification found for the defendant as to the pulling down; Stead *v.* Gamble, 7 E. 325.] breaking the house, *making a noise and continuing* in it *until the plaintiff was obliged to give* the defendant a promissory note; Appleton *v.* Smith, 3 Bur. 1282 [in an action for mesne profits; Doe *v.* Davies, 6 T. R. 593.] The asportation of personal property entitles the plaintiff to full costs, though complained of in the same declaration as a trespass; but no more costs than damages were allowed for digging peat, &c. and carrying away the same, the asportation being only a mode and qualification of the injury to the land; Clegg *v.* Molineux, Doug. 780. Many cases have arisen where the plaintiff complained of an assault on his person, and also an injury to his clothes; but it seems now to be fully settled, that where the injury to the clothes is a consequence of the assault, or part of the same transaction, it will not entitle the plaintiff to more costs than damages; Mears *v.* Greenaway, 1 Hen. Bl. 295; [R. accordingly, although the tearing of the clothes was charged as a substantive fact; Lockwood *v.* Stannard, 6 T. R. 482.] The doctrine upon this subject is very clearly stated in the case of Batchelor *v.* Bigg, 3 Wils. 319: vide also Mr. Hullock's Treatise on the Law of Costs, where the subject is fully and ably considered, and from which the foregoing cases have been extracted.

"It should be observed, that in those cases where the plaintiff is not deprived of full costs by the stat. of Chas. II. his right to them may be prevented by a judge's certificate under 43 Eliz. c. 6."

(1) If the defendant pleads a justification of *son assault demesne* to the assault and battery, a certificate is unnecessary; 2 Keb. 849; Richards *v.* Turner, B. N. P. 330: so in case of a justification *molliter manus imposuit* to turn the plaintiff out of a garden; Washer *v.* Smith, 2 Burnard, K. B. 180, 277; 2 Keb. 93: a plea that the plaintiff and defendant were at a parish meeting, when the defendant made a great disturbance, and the plaintiff required the defendant to desist, who refused, whereupon the plaintiff *molliter manus imposuit* to turn him out; Smith *v.* Edge, 6 T. R. 562. Secus, if the justification is to the *assault only*, independently of the battery; Page *v.* Creed, 3 T. R. 391; Brennan *v.* Redmond, 1 Taunt. 16.

(2) No certificate is requisite where it appears by the pleadings that the title was in question; as upon plea of right way and replication, *extra viam*. Asser *v.* Finch, 2 Lev. 234. and other cases cited Hullock; Martin *v.* Vallance, 1 E. 350. Secus, where the right of way was pleaded by Metes and Bounds; Cockerill *v.* Allanson, B. R. 22 G. III. (Hullock, 76). The defendant pleaded two pleas of justification; the plaintiff replied, by way of new assignment, that the trespasses were committed on other days, and on other occasions, and recovered a verdict under 40*s*. Ruled, that he was entitled to the costs of all the pleadings; Gundry *v.* Sturt, 1 T. R. 636. In Hudson *v.* Browne, Barnes, 124, Lloyd *v.* Day, id. 149, the defendant having pleaded a justification, and the plaintiff new assignment, and recovered under 40*s*., it was ruled that he was entitled to no more costs than damages. In the first case the court said, "Here is no special pleading; the new assignment is only to ascertain the plea" In the second, that "the plea of not guilty, being to the new assignment, makes no difference." I cannot discover on what ground Gundry *v.* Sturt was decided, except the intimation of the master, that it had been the practice to allow costs in such cases; or why a defendant, who had committed two trespasses, one qualified and justifiable, the other not so, should be subject to greater liability for the latter, than if the former had not taken place. And in Gregory *v.* Ormerod, 4 Taunt. 98. of which I was not aware at the time of making the preceding observation, it was held, conformably to the authority of Cockerill *v.* Allanson, that when the defendant justified under a *fi. fa.*, and the plaintiff now assigned other trespasses committed after the return, he was not entitled to more costs than damages; and Mansfield C. J. said, "It is a monstrous thing that where a plaintiff has been wholly in the wrong in bringing an action for a trespass, which is fully qualified by a right of way, or other right, he therefore shall have full costs, because he brings another action for another little trifling trespass, which he may happen to be able to prove."

In Redridge *v.* Palmer, 2 H. B. 2, the defendant pleaded a licence, and the plaintiff having obtained a verdict for 1*s*., the court held that he was entitled to full costs, upon the ground that the rule which had long prevailed in both courts, that when there was a special plea of justification the plaintiff was entitled to full costs, ought not to be disturbed. So in Comer *v.* Baker, 2 H. B. 341, where the defendant pleaded, 1. the general issue; 2. disclaimer of title, and tender of amends; 3. distress, damage feasant, for the same trespass; 4. escape of cattle for defect of fences; 5. licence. The Court said, that if it had been a new case, they should have

damages to be under the value of forty shillings, shall not recover or obtain more costs of suit than the damages so found shall amount unto: And if any more costs in any such action shall be awarded, the judgment shall be void, and the defendant is hereby acquitted of and from the same, and may have his action against the plaintiff for such vexatious suit, and recover his damages and costs of such his suit in any of the said courts of record.

No. VII. 22 & 23 C. II. c. 9.

Extended to counties palatine by 11 & 12 W. 3. c. 9.

## [ No. VIII. ] 8 & 9 William III. c. 11.—An Act for the better preventing frivolous and vexatious suits.

8 and 9 W. III. c. 11.

FOR relief of His Majesty's good subjects against causeless and unjust suits, and for the better enabling them to recover their just rights, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the five and twentieth day of *March*, which shall be in the year of our Lord One thousand six hundred ninety and seven, where several persons shall be made defendants to any action or plaint of trespass, (1), assault, false imprisonment, or *ejectione firmæ*, and any one or more of them shall be upon the trial thereof acquitted by verdict, every person or persons so acquitted shall have and recover his costs of suit, in like manner as if a verdict had been given against the plaintiff or plaintiffs, and acquitted all the defendants; unless the judge before whom such cause shall be tried, shall immediately after the trial thereof, in open court, certify upon the record under his hand, that there was a reasonable cause for the making such person or persons a defendant or defendants to such action or plaint.

Where several persons are defendants to any action, &c.

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thought that the argument of the defendant on the construction of the statute ought to be adopted. But that as a different practice had prevailed, and was confirmed by Redridge *v.* Palmer, which was decided upon great consideration, they did not think it right to depart from it. This is clearly one of the cases in which a practice admitted to be erroneous might have been corrected without inconvenience. But the same point was decided upon a plea of licence, in Paddle *v.* Kiddle, 7 T. R. 659. Lord Kenyon, referring to the preceding cases, says, "The principle on which those determinations were founded is, that when the case is such, that the judge who tries it cannot, in any view of it, grant a certificate within the act, it is decided to be a case out of the statute. Here was a plea of licence, upon which the question could not arise, whether or not the defendant had a title to the land; the question was, whether or not he had liberty to go over the land; therefore the case was not within the statute." He further adverted to its being a dangerous innovation to disturb such a settled point. It would, I apprehend, be very difficult to find any thing more unsatisfactory, in point of reasoning, than the ground of decision which has been just cited. The statute restrains the allowance of costs, unless the judge certifies that the title did come in question. The courts say, that the exception confines the rule to *Actions*, wherein the title could come in question. It is further settled, that the certificate shall not be required, where, by the pleading, it appears that the title did come in question; and this is followed up by the doctrine that in actions where the title might come in question, and therefore within the purview of the Act, an exception intended to protect cases where the title actually did come in question, shall be further extended by construction, upon the especial ground, that, according to the matter pleaded, by no possibility it could come in question.

It was formerly held, that no certificate was necessary, where there had been a view before trial: but since the stat. 4 Anne, c. 16, the practice has been to grant a view of course, and full costs are not allowed on account of such view, although granted at the instance of the defendant; Flint *v.* Hill, 11 E. 184. Possibly, the very object of requiring the view, may be to shew the insignificance of the damage sustained. Where a cause is referred to arbitration, and by the rule of reference the costs are *to abide the event*, the finding of the arbitrator is not equivalent to a certificate of the judge.

(1) See Hullock, c. 2. s. 3.

This provision does not extend to actions on the case; Dibben *v.* Cooke, 2 Stra. 1005; Poole *v.* Boulton, Barnes, 139; Marriner *v.* Barrett, cited 3 Burr. 1285: replevin, Ingle *v.* Wardsworth, 3 Burr. 1284; 1 Bl. 365. *Debt against executors*, one of whom had a verdict on *plene administravit*, Duke of Norfolk *v.* Anthony, 2 Tidd's Pract. 4th ed. 890. When the defendant pleaded jointly, the costs allowed to the defendant on acquittal are only 40*s.*; Hughes *v.* Clubb, 2 M. and S. 174. Qu. ibid. if they had pleaded separately?

No. VIII.
8 & 9 W. III. c. 11.

Defendant, on judgment given for him, &c. to recover costs.

'II. And forasmuch as for want of a sufficient provision by law for 'the payment of costs of suit, divers evil disposed persons are encou-'raged to bring frivolous and vexatious actions, and others to neglect 'the due payment of their debts;' Be it further enacted by the authority aforesaid, That if at any time from and after the said five and twentieth day of *March*, any person or persons shall commence or prosecute in any court of record any action, plaint, or suit, wherein upon any demurrer, (1) either by plaintiff or defendant, demandant or tenant, judgment shall be given by the court against such plaintiff or demandant, or if at any time after judgment given for the defendant in any such action, plaint, or suit, the plaintiff (2) or demandant shall sue any writ or writs of error to annul the said judgment, and the said judgment shall be afterwards affirmed to be good, or the said writ of error shall be discontinued, or the plaintiff shall be nonsuit therein, the defendant or tenant in every such action, plaint, suit, or writ of error, shall have judgment to recover his costs against every such plaintiff or plaintiffs, demandant or demandants, and have execution for the same by *capias ad satisfaciendum*, *fieri facias*, or *elegit*.

Plaintiff obtaining judgment on an action of waste, &c. to recover costs.

III. And be it further enacted by the authority aforesaid, That from and after the said five and twentieth day of *March*, in all actions of waste (3) and actions of debt upon the statute, for not setting forth of tithes, wherein the single value or damage found by the jury (4) shall not exceed the sum of twenty nobles, and in all suits upon any writ or writs of *scire facias*, (5) and suits upon prohibitions, (6) the plaintiff

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(1) See Hullock, c. 2. s. 4.—This clause only extends to demurrer on the merits, and not to a judgment *quod billa cassetur* upon plea in abatement; Thomas *v.* Lloyd, 1 Salk. 194; confirmed by several subsequent cases: nor to give costs where the plaintiff would not have been entitled to costs upon a verdict as in formedon; Miller *v.* Seagrave, Cas. of Prac. in C. B. 25. So in *quare impedit*; Thrale *v.* Bishop of London, 1 H. B. 530. Upon pleas of the general issue and statute of limitations, the plaintiff took issue on the first, and demurred to the second; the issue was found for the plaintiff, and afterwards the demurrer adjudged for the defendant. Ruled, that the defendant should have costs on the demurrer, and no costs be allowed on the issue; Cooke *v.* Sager, 2 Burr. 713. It had been previously holden in the Common Pleas, (Yates *v.* Green, Barnes, 141.) that in such case the plaintiff should have the costs of the issue, and the lesser costs be deducted from the greater; Yates *v.* Green, Barnes, 141. Upon a declaration of two counts, demurrer to one found for the defendant, and issue on the other, found for the plaintiff; ruled, that the defendant should not have costs of the demurrer; Astley *v.* Young, 2 Burr. 1233; which was admitted to be a settled law in Postan *v.* Stanway, 5 E. 161. By the several authorities cited in that case, it appears that a plaintiff, who has a clear and an experimental right of action against the same defendant, has a great advantage in suing on the latter without risk of costs.

(2) Before this statute, costs in error were only given in favour of the plaintiff in the original suit. An executor plaintiff in the original action is not liable to costs in error; Gale *v.* Till, Carth. 281; Comb. 228; 3 Lev. 375; String. 400. See observations in the different reports of this case, Hullock, ch. 4. sec. 2. For costs in error generally, see Title *Error*, post.

(3) Damages were recoverable at common law in waste against tenant by the curtesy or in dower, and the Statute of Gloucester giving treble damages, the plaintiff is in such case entitled to treble costs; but as no damages could be recovered against tenant for life or years before the statute of Gloucester, they were only rendered liable to costs by this Act; Hullock, c. 4. s. 3.

(4) Costs are not allowed under this Act upon judgment by default; Biddulph *v.* Cooper, cited 1 H. B. 108: nor upon counts for treble value, when after a demurrer the cause was referred to an arbitrator, who found the single value under twenty nobles; but in that case costs were allowed on the count for single value; Barnard *v.* Moss, 1 H. B. 107.

(5) See Hullock, ch. 4. s. 5.—This only extends to *scire facias* in civil suits, not to *scire facias* to repeal a patent; Rex *v.* Miles, 7 T. R. 367: in Huer *v.* Whitebread, Cas. Prac. C. B. 74; Pool *v.* Broadfield, Barnes, 431; it was held that costs could not be given against a plaintiff applying to quash his own *scire facias*, and it was ruled accordingly in Parklington *v.* Peck, 1 Stra. 638, on the plaintiff applying for leave for that purpose after plea in abatement; but the Court said, if there had been no plea, that they would have made the plaintiff pay the costs. An executor suing or sued in *scire facias* is exempt from costs by sect. 5.; Bellew *v.* Aylmer, 1 Stra. 188.

(6) See Hullock, ch. 4. s. 6.—For costs in prohibition, under stat. 2 & 3 Edw. VI. c. 13, see that statute *supra*, Part I. Class II. No. XVI. It is settled by several cases cited in Hullock, ubi supra, that a plaintiff having judgment in prohibition, is entitled to costs from the first suggestion. But a defendant in

obtaining judgment, or any award of execution after plea pleaded, or demurrer joined therein, (1) shall likewise recover his costs of suit; and if the plaintiff shall become nonsuit, or suffer a discontinuance, or a verdict (2) shall pass against him, the defendant shall recover his costs, and have execution for the same in like manner as aforesaid.

If defendant be found guilty, plaintiff to have costs, &c.

IV. And for the preventing of wilful and malicious trespasses, be it further enacted, That in all actions of trespass to be commenced or prosecuted, from and after the said five and twentieth day of *March*, One thousand six hundred ninety and seven, in any of his Majesty's courts of record at *Westminster*, wherein at the trial (3) of the cause it shall appear and be certified by the judge, under his hand, upon the back of the record, that the trespass upon which any defendant shall be found guilty, was wilful and malicious, the plaintiff shall recover, not only his damages but his full costs of suit; any former law to the contrary notwithstanding. (4)

Law against executors not to be altered.

V. Provided always, That nothing herein contained shall be construed to alter the laws in being as to executors or administrators, (5) in such cases where they are not at present liable to the payment of costs of suit.

[For the remainder of the Act see the next Class.]

case of a nonsuit, is not entitled to costs of opposing the rule of a prohibition; Carlisle *v.* Meyrick, Sayer on Costs, 137. If upon demurrer to a declaration on prohibition, a prohibition be awarded upon some points and not on others, the plaintiff is entitled to costs; Middleton *v.* Croft, 2 Stra. 1062; Andrew, 62. A defendant is entitled to costs if part only of the issue is found for him, whereupon a consultation is awarded; Malton *v.* Acklam, Barnes, 138; Brymer *v.* Atkins, Tidd, 851. If the jury find a modus different from that alleged by the plaintiff, the defendant is entitled to costs; Brock *v.* Richardson, 1 T. R. 427.

(1) There are no costs under this provision in case of judgment by default, but if the plaintiff have damages on the writ of enquiry for the contempt, in proceeding after the delivery of the writ of prohibition, he may have costs under the statute of Gloucester: see Bettinson *v.* Hinchman, Cas. Pr. C. B. 20; Bettinson *v.* Savage (come semble S. C.) Com. Rep. 335. Costs were given against the defendant where he had forced the plaintiff to declare, and afterwards pleaded a frivolous plea; Seed *v.* Woolfenden, 2 Barnes, 148. But the defendant may waive the right of requiring the plaintiff to declare in prohibition, and in that case proceedings are stayed without costs; Gregge *v.* Jones, 2 Stra. 1148. There are no costs against executors either as plaintiffs or defendants in prohibition: see sect. 5, infra; Scummull *v.* Wilkinson, 9 E. 202.

(2) The statute omits the case of costs to the defendant upon demurrer.

(3) In Ford *v.* Parr, 2 Wils. 21, the judge having certified out of Court, the Court said that the certificate was void and contrary to the statute, which enacts that it shall be made in open court at the trial. But in Harper *v.* Carr, 7 T. R. 448, it is said to have been determined in a preceding case of Swinnerton *v.* Jervis, (mentioned 6 T. R. 12, n. but on a different trial) that the certificate might be out of court.

(4) In 3 Bla. Com. 214, it is said that every trespass is wilful where the defendant has notice, and is especially forewarned not to come in the land, as every trespass is malicious where the intent of the defendant appears plainly to harass and distress the plaintiff. But no authority is cited, and perhaps the learned Commentator, as to wilful trespass, intended rather to state a general rule than a universal position. In Reynolds *v.* Edwards, 6 T. R. 11, it was held on the authority of a preceding case of Swinnerton *v.* Jervis, that the judge was bound to certify in case of trespass after notice, although it appeared in Reynolds *v.* Edwards that the defendant did not know that the land was that of the plaintiff, and wished to avoid trespassing contrary to a general notice which had been given. But in Gorst *v.* Watkins, 3 E. 495, upon a rule to shew cause why the judge should not certify, the Court held that the rule was improper, and that the judge had a discretion. It seems also in this case to be the opinion of the Court, that there should be some evidence of agency in the person by whom the notice is immediately given. But I should apprehend that this was in the breast of the judge, and that he is not bound to confine his conclusion of the act being wilful, to a particular evidence of its being so.

(5) See supra, n. (5) and (6).

# PART IV.

## CLASS XII.

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### *Judgment and Execution,*

And herein of Statutes and Recognizances.

[ No. I. ] Statutum de Mercatoribus, the Statute of Acton-Burnel, made anno 11 Edward I. and Anno Dom. 1283. Ordaining the Statute-Merchant for recovery of debts.

11 Edward I. c. 1.

"FORASMUCH as merchants, which heretofore have lent their goods "to divers persons, be greatly impoverished because there is no "speedy law provided for them to have recovery of their debts at the "day of payment assigned; and by reason hereof many merchants have "withdrawn to come into this realm with their merchandizes, to the "damage as well of the merchants as of the whole realm;" 'the King 'by himself and by his council hath ordained and established that the 'merchant which will be sure of his debt shall cause his debtor to come 'before the Mayor of *London*, or of *York*, or *Bristol*, or before the 'Mayor and a clerk (which the King shall appoint for the same) for 'to knowledge the debt and the day of payment; and the recogni-'zance shall be entered into a roll with the hand of the said clerk, 'which shall be known. Moreover, the said clerk shall make with his 'own hand a bill obligatory, whereunto the seal of the debtor shall be 'put, with the King's seal that shall be provided for the same purpose, 'the which seal shall remain in the keeping of the mayor and clerk 'aforesaid: And if the debtor doth not pay at the day to him limited, 'the creditor may come before the said mayor and clerk with his bill 'obligatory; and if it be found by the roll and by the bill that the debt 'was knowledged, and that the day of payment is expired, the mayor 'shall incontinent cause the moveables of the debtor to be sold, as far 'as the debt doth amount, by the praising of honest men, as chattels, 'burgages deviseable, until the whole sum of the debt; and the money, 'without delay, shall be paid to the creditor. And if the mayor can 'find no buyer, he shall cause the moveables to be delivered to the 'creditor at a reasonable price, as much as doth amount to the sum of 'the debt, in allowance of his debt; and the King's seal shall be put 'unto the sale and deliverance of the burgages deviseable for a perpe-'tual witness. And if the debtor have no moveables within the juris-'diction of the mayor, whereupon the debt may be levied, but hath 'some other-where within the realm, then shall the mayor send the re-'cognizance made before him and the clerk aforesaid unto the Chan-'cellor, under the King's seal; and the Chancellor shall direct a writ 'unto the sheriff in whose bailiwick the moveables of the debtor be, 'and the sheriff shall cause him to agree with his creditor in such form 'as the mayor should have done in case that the moveables of the debtor 'had been within his power. And let them that shall praise the move-'able goods, to be delivered unto the creditor, take good heed that they 'do set a reasonable price upon them; and if they do set an over high 'price for favour borne to the debtor, and to the damage of the cre-'ditor, then shall the thing so praised be delivered unto themselves at 'such price as they have limited, and they shall be forthwith answer-'able unto the creditor for his debt. And if the debtor will say that his 'moveable goods were delivered or sold for less than they were worth,

Acknowledging of a statute merchant.

The seal of the statute.

A certificate of the statute into the Chancery.

The goods extended delivered to the praisers.

No. I.
11 Edward I. c. 1.

'yet shall he have no remedy thereby; for when the mayor or the sheriff hath sold the moveable goods lawfully to him that offered most, he may account it his own folly that he did not sell his own moveable goods himself before the day of his suit (when he might, and would not) and have levied the money with his own hands And if the debtor have no moveables whereupon the debt may be levied, then shall his body be taken where it may be found, and kept in prison, until that he have made agreement, or his friends for him; and if he have not wherewith he may sustain himself in prison, the creditor shall find him bread and water, to the end that he die not in prison for default of sustenance, the which costs the debtor shall recompense him with his debt, before that he be let out of prison. And if the creditor be a merchant-stranger he shall remain at the costs of the debtor for so long time as he tarrieth about the suit of his debt, and until the moveable goods of the debtor be sold or delivered unto him. And if the creditor do not take the debtor alone for the surety of his payment, by reason whereof pledges or mainpernors be founden, then those pledges or mainpernors shall come before the mayor and clerk aforesaid, and shall bind themselves by writings and recognizances, as afore is said of the debtor. And in like manner if the debt be not paid at the day limited, such execution shall be awarded against the pledges or mainpernors, as before is said of the debtor.

The debtor imprisoned.

The debtor's diet.

The creditor a stranger.

The creditor's pledges.

'II. Provided nevertheless, That so long as the debt may be fully taken and levied of the goods moveable of the debtor, the mainpernors or pledges shall be without damage: Notwithstanding for default of moveable goods of the debtor, the creditor shall have execution of his recognizance upon the mainpernors or pledges, in such manner and form as before is limited against the principal debtor.'

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## [ No. II. ] 13 Edward I. stat. 1. (Westminster the second) c. 18.—He that recovereth debt may sue execution by *fieri facias* or *elegit*. *

13 Edward I. st. 1. c. 18.

'WHEN debt is recovered or knowledged in the King's Court, or damages awarded, it shall be from henceforth in the election of him that sueth for such debt or damages, to have a writ of *fieri facias* unto the sheriff for to levy the debt of the lands and goods; or that the sheriff shall deliver to him all the chattels of the debtor (saving only his oxen and beasts of his plough) and the one half of his land, until the debt be levied upon a reasonable price or extent. And if he be put out of that tenement, he shall recover by a writ of *novel disseisin*, and after by a writ of *redisseisin* if need be.'

The execution of a debt recovered.

Assise maintainable by tenant by elegit.

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## [ No. III. ] 13 Edward I. stat. 1. (Westminster the second) c. 45.—The process of execution of things recorded within the year, or after.

13 Edward I. st. 1. c. 45.

"BECAUSE that of such things as be recorded before the Chancellor and the Justices of the King that have record, and be inrolled in their rolls, process of plea ought not to be made by summons, attachments, essoign, view of land, and other solemnities of the court, as hath been used to be done of bargains and covenants made out of the court;" 'from henceforth it is to be observed, That those things which are found inrolled before them that have record, or contained in fines, whether they be contracts, covenants, obligations, services, or customs knowledged, or other things whatsoever inrolled, wherein the King's court, without offence of the law and custom, may execute their authority, from henceforth they shall have such vigour that

There shall be no delays in those things that be recorded.

* For the law respecting execution by elegit see Williams's notes, 2 Saund. 68, and 1 B & A. 40.

No. III.
13 Edward I. st. 1. c. 45.

Execution of things recorded.

A *scire facias* after the year.

'hereafter it shall not need to plead for them. But when the plaintiff 'cometh to the King's court, if the recognizance or fine levied be 'fresh, that is to say, levied within the year, he shall forthwith have a 'writ of execution of the same recognizance made. And if the recog-'nizance were made, or the fine levied of a further time passed, the 'sheriff shall be commanded that he give knowledge to the party of 'whom it is complained, that he be afore the justices at a certain day, 'to shew if he have any thing to say why such matters inrolled or con-'tained in the fine ought not to have execution. And if he do not 'come at the day, or peradventure do come, and can say nothing 'why execution ought not to be done, the sheriff shall be commanded 'to cause the thing inrolled or contained in the fine to be executed.

Ordinary.

A mean.

'In like manner, an ordinary shall be commanded in his case; observ-'ing nevertheless as before is said of a mean, which by recognizance 'or judgment is bound to acquit.'

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## [ No. IV. ] The Statute of Merchants, made at Westminster Anno 13 Edward I. stat. 3. and Anno Dom. 1285.

### Cap. 1.

The Form of knowledging a Statute Merchant. The creditor's remedy if his debt be not paid. The King's seal shall be sent to keepers of fairs. Taking of recognizance.

13 Edward I. st. 3. c. 1.

"FORASMUCH as merchants, which heretofore have lent their goods "to divers persons, be fallen in poverty because there is no speedy "remedy provided, whereby they may shortly recover their debt at the "day of payment; and for this cause many merchants do refrain to "come into the realm with their merchandize, to the damage of such "merchants and of all the realm;" 'the King and his council, at his 'Parliament holden at *Acton Burnel*, after the Feast of Saint *Michael*, 'the eleventh year of his reign, ordained establishments thereupon for 'the remedy of such merchants; which ordinances and establishments, 'the King commanded that they shall be firmly kept and observed 'throughout this realm, whereby merchants have had remedy and have 'recovered their debts with less inconvenience and trouble than they 'had heretofore.' "But forasmuch as merchants after complained "unto the King, that sheriffs misinterpreted his statutes, and some-"times by malice and false interpretation delayed the execution of the "statute, to the great damage of merchants;" 'The King at his Par-'liament holden at *Westminster*, after *Easter*, the thirteenth year of 'his reign, caused the said statute made at *Acton Burnel* to be rehearsed;

The form of acknowledging of a statute merchant.

'and for the declaration of certain articles in the statute aforesaid hath 'ordained and established, That a merchant who will be sure of his 'debt shall cause his debtor to come before the Mayor of *London*, or 'before some chief warden of a city, or of another good town, where 'the King shall appoint, and before the mayor and chief warden, or 'other sufficient men chosen and sworn thereto, when the mayor or 'chief warden cannot attend, and before one of the clerks that the King 'shall thereto assign, when both cannot attend, he shall acknowledge

Sealing of a statute.

'the debt and the day of payment; and the recognizance shall be en-'rolled by one of the clerk's hands being known, and the roll shall be 'double, whereof one part shall remain with the mayor or chief warden, 'and the other with the clerks that thereto shall be first named; and 'further, one of the said clerks with his own hand shall write an obli-'gation, to which writing the seal of the debtor shall be put with the 'King's seal provided for the same intent; which seal shall be of two 'pieces, whereof the greater piece shall remain in the custody of the 'mayor or the chief warden, and the other piece in the keeping of the

No. IV.
13 Edward I. st. 3. c. 1.

'foresaid clerk. And if the debtor do not pay at the day limited unto 'him, then shall the merchant come to the mayor and clerk with his 'obligation; and if it be found by the roll or writing that the debt was 'acknowledged, and the day of payment expired, the mayor or chief 'warden shall cause the body of the debtor to be taken (if he be lay) 'whensoever he happeneth to come in their power, and shall commit 'him to the prison of the town, if there be any, and he shall remain 'there at his own costs, until he hath agreed for the debt. And it is 'commanded that the keeper of the town prison shall retain him upon 'the delivery of the mayor or warden; and if the keeper shall not re-'ceive him he shall be answerable for the debt, if he have whereof; 'and if he have not whereof, he that committed the prison to his 'keeping shall answer. And if the debtor cannot be found in the 'power of the mayor or chief warden, then shall the mayor or chief 'warden send into the Chancery, under the King's seal the recognizance 'of the debt; and the Chancellor shall direct a writ unto the sheriff in 'whose shire the debtor shall be found, for to take his body (if he be 'lay) and safely to keep him in prison until he hath agreed for the debt; 'and within a quarter of a year after that he is taken, his chattels shall 'be delivered him, so that by his own he may levy and pay the debt; 'and it shall be lawful unto him, during the same quarter to sell his 'lands and tenements for the discharge of his debts, and his sale shall 'be good and effectual. And if he do not agree within the quarter next 'after the quarter expired, all the lands and goods of the debtor shall 'be delivered unto the merchant by a reasonable extent, to hold them 'until such time as the debt is wholly levied; and nevertheless the body 'shall remain in prison as before is said, and the merchant shall find 'him bread and water, and the merchant shall have such seisin in the 'lands and tenements delivered unto him or his assignee, that he may 'maintain a writ of *novel disseisin* if he be put out, and redisseisin also, 'as of freehold, to hold to him and his assigns until the debt be paid; 'and as soon as the debt is levied the body of the debtor shall be deli-'vered with his lands. And in such writs as the Chancellor doth award, 'mention shall be made, that the sheriff shall certify the justices of the 'one bench or of the other, how he hath performed the King's com-'mandment, at a certain day, at which day the merchant shall sue 'before the justices, if agreement be not made; and if the sheriffs do 'not return the writ, or do return that the writ came too late, or that 'he hath directed it to the bailiffs of some franchise, the justices shall 'do as it is contained in the latter statute of *Westminster*. And if in 'case the sheriff return, that the debtor cannot be found, or that he is 'a clerk, the merchant shall have writs to all the sheriffs where he shall 'have land, and that they shall deliver unto him all the goods and lands 'of the debtor by a reasonable extent, to hold unto him and his assigns 'in the form aforesaid; and at the last he shall have a writ to what 'sheriff he will, to take his body (if he be lay) and to retain it in man-'ner aforesaid. And let the keeper of the prison take heed that he 'must answer for the body, or for the debt. And after the debtor's 'lands be delivered to the merchant, the debtor may lawfully sell his 'land, so that the merchant have no damage of the approvements; and 'the merchants shall always be allowed for their damages, and all costs, 'labours, suits, delays, and expenses reasonable. And if the debtor find 'sureties which do acknowledge themselves to be principal debtors, 'after the day passed the sureties shall be ordered in all things as is said 'of the principal debtor, as to the arrest of body, delivery of lands, 'and other things. And when the lands of the debtors be delivered unto 'the merchant, he shall have seisin of all the lands that were in the 'hand of the debtor, the day of the recognizance made, in whose hands 'soever that they come after, either by feoffment or otherwise. And 'after the debt paid, the debtor's lands, and the issues of lands of 'debtors by feoffment shall return again, as well to the feoffee as the 'other lands unto the debtors. And if the debtor or his sureties die, 'the merchant shall have no authority to take the body of his heir, but

The creditor's remedy if the debt be not paid.

Certificate of the statute into the Chancery.

Within what time the debtor may sell his land.

What estate the merchant shall have in the debtor's lands.

How the debtor's sureties shall be used.

What lands shall be extended.

The heir's lands but not his body, shall be extended.

No. IV.
13 Edward I. st. 3. c. 1.

A seal for fairs.

*Q. *And by the commonalty of merchants, two shall be chosen who are merchants of the city of London.*

The statute shall be read to the debtor.

The King's duty upon a statute acknowledged

Taking of recognizances.

'he shall have his lands, as before is said, if he be of age, or when he shall be of full age. And a seal shall be provided that shall serve for fairs, and the same shall be sent unto every fair under the King's seal by a clerk sworn, or by the keeper of the fair. And of the * *Commonalty of the merchants of the city of* London, *two merchants shall be chosen,* that shall swear, and the seal shall be opened before them, and the one piece shall be delivered unto the foresaid merchants, and the other shall remain with the clerk; and before them, or one of the merchants (if both cannot attend) the recognizances shall be taken, as before is said. And before that any recognizance be inrolled, the pain of the statute shall be openly read before the debtor, so that after he cannot say that any did put another penalty than that whereunto he bound himself. And to maintain the costs of the said clerk, the King shall take of every pound a penny, in every town where the seal is, except fairs, where he shall take one penny halfpenny of the pound. This ordinance and act the King willeth to be observed from henceforth throughout his realm of *England* and *Ireland*, amongst the which people they that will may make such recognizances, (except *Jews*, to whom this ordinance shall not extend.) And by this statute a writ of debt shall not be abated: and the Chancellor, justices of the one bench and the other, the barons of the Exchequer and justices errants, shall not be estopped to take recognizances of debts of those who are willing to acknowledge them before them: But the execution of recognizances made before them shall not be done in the form aforesaid, but by the law and manner before used, and otherwise provided in other statutes.'

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## [No. V.] 27 Edward III. st. 2. c. 9.—The Effect of a Recognizance knowledged in the Staple for Recovery of a Debt.

27 Edward III. st. 2. c. 9.

In what manner execution shall be made of the statute-staple.

Execution awarded out of the Chancery, if the debtor have not sufficient in the staple.

What estate the creditor shall have in the debtor's land extended.

ITEM, To the intent that the contracts made within the same staple shall be the better holden, and the payments readily made; We have ordained and established that every mayor of the said staples shall have power to take recognizances of debts which a man will make before him in the presence of the constables of the staple, or one of them: And that in every of the said staples be a seal ordained, remaining in the custody of the mayor of the staple, under the seals of the constables; and that all obligations which shall be made upon such recognizances be sealed with the said seal, paying for every obligation of an 100*l.*, and within of every pound an halfpenny, and of every obligation above an 100*l.* a farthing. And that the mayor of the staple, by virtue of the same letters so sealed, may take and hold in prison the bodies of the debtors after the term incurred, if they be found within the staple, till they have made gree to the creditor of the debt and damages; and also arrest the goods of the said debtors found within the said staple, and deliver the said goods to (the said creditors) by true estimation, or (to) sell them at the best that a man may, and deliver the money to the creditors until the sum due. And in case that the debtors be not found within the staple, nor their goods to the value of the debt, the same shall be certified in the chancery under the said seal, by which certification a writ shall be sent to take the bodies of the said debtors without letting them to mainprise, and to seize their lands and tenements, goods and chattels; and the writ shall be returned in the chancery with the certificate of the value of the said lands and tenements, goods and chattels; and thereupon due execution shall be made from day to day in manner as it is contained in the statute merchant, so that he to whom the debt is due shall have estate of freehold in the lands and tenements which shall be delivered to him by virtue of the same process and recovery by writ of novel disseisin in case if he be outed; and that the debtor have no advantage of the quarter of a year which is contained in the said statute

merchant. And in case that (no creditor will have letters) of the said seal, but will stand to the faith of the debtor, if after the term incurred he demand the debt, the debtor shall be believed upon that faith.

No. V. 27 Edw. III. st. 2. c. 9.

## [No. VI.] 1 Richard II. c. 12.—A Prisoner by Judgment shall not be let at large. Confession of a Debt to the King to delay another's Execution.

[Inserted ante, Class III. No. 8.]

## [No. VII.] 5 Henry IV. c. 12.—Execution may be awarded upon a Statute once shewed in Court.

5 Henry IV. c. 12.

'ITEM, It is ordained and established, that when any statute merchant is certified into the chancery, and thereupon a writ awarded to the sheriff, and returned into the common place, and the statute there once shewed, that howsoever the process after the same shewing be discontinued, that at what time the party sueth to have the process recontinued, and to have execution of the statute merchant aforesaid; that the justices of the bench, where the statute was once shewed, may upon the same record make and award full execution of the statute merchant aforesaid, without having the sight or shewing thereof another time after; and that this statute hold place of all statutes merchant, not fully executed at this time.'

## [No. VIII.] 11 Henry VI. c. 10.—He shall find Sureties, &c. that sueth to defeat an Execution upon a Statute.

11 Henry VI. c. 10.

"ITEM, Because divers persons within this realm in times past often have been taken and arrested by divers sheriffs and other officers of the King, by writs as well going out of the chancery of the King, as of his progenitors, to have execution of divers recognizances made before the mayors of the staple, of divers sums, of which sums such persons, to whom the duty belonged, had no convenient remedy, other than the said executions, which persons, so taken and arrested for execution of the same recognizances, be often times brought by divers writs *de corpus cum causa* before the King in his chancery, out of prisons in the which they be so kept by force of such executions, and there they do sue, shewing forth divers indentures, and others things in defeasance of such recognizances, desiring writs of *scire facias* to warn the party or parties at whose suit they be taken and arrested, to answer thereunto; and thereupon by surety found to the King in the chancery, have been delivered out of prison, notwithstanding their said arrest for the execution of such recognizances, as above is said, no surety found to the recognizees to whom they be so bound to satisfy them of their duties, in case that the matters comprised within the said writs of *scire facias* be not found nor adjudged for the recognizors thereby bound; whereby the said recognizees have been sometime greatly delayed of their execution, and sometime their execution utterly lost, and in time to come likely to be lost, for that no advantage nor avail thereof might come, be, or accrue to the said recognizees to whom such persons be so bound by the said surety so bound to the King, seeing the same person so bound may by the King's pardon be acquit and discharged for ever. Our Lord the King considering that the said recognizees, to whom persons be bound, are oftentimes without remedy, if so be that the said recognizors would not pursue forth their said writs of *scire facias* with effect; or otherwise, that the matters of the said writs of *scire facias* be found or adjudged against them, and thereupon they withdraw them to places

No. VIII. 11 Hen. VI. c. 10.

"privileged, or eloign them out of the realm, or else they would not "appear, so that their bodies might be put in execution; to the great "hindrance and undoing of such recognizees in time to come; and "also because that the King is inherited of the taking of such sureties "to himself by the course of the chancery;" 'the King doth will 'that from henceforth such sureties be made as well to the King 'as to the party.'

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## [No. IX.] 23 Henry VIII. c. 6.—For Obligations to be taken by Two Chief Justices, the Mayor of the Staple, and the Recorder of *London*.

23 Henry VIII. c. 6.

'FORASMUCH as the mayors of the staple in divers places of this 'realm, where any staple is kept, in the presence of the constables 'of the same staple before this time have and might lawfully take recog-'nizance or knowledge for debts, only concerning and touching the 'merchandize of the same staple, betwixt merchant and merchant of 'the same staple, according to divers laudable statutes and provisions 'before this time had, ordained and made; which mayors and con-'stables, many and sundry times since the making of the same statute, 'have taken divers recognizances and knowledges of divers of the 'King's subjects for debts, surmising the same knowledge or recogniz-'ance to be made for surety of payment of sums of money for such 'wares as were or have been bought in the same staple; where of troth 'the same recognizance did not in any wise touch or concern the mer-'chandize of the same, ne also the parties, that is to say, the cognisor, 'ne the cognizee, that did knowledge and take the same recognizances, 'were merchants of the same staple; which recognizances and know-'ledges, taken in form aforesaid, are not only clear contrary to the true 'meaning and intent of the same former estatutes, but also thereby 'divers great and sundry inconveniences, damages, and deceits do daily 'arise and grow to divers of the subjects of our sovereign Lord the 'King, by reason of the misusing of the same; and forasmuch as the 'King's highness, of his most high wisdom, perceiveth the misusing and 'execution of the same to be contrary to the form of the said former 'statutes, therefore his pleasure is, that some true, lawful and reasonable 'bond, for surety of the payment of the debts of his subjects, shall be 'made and devised by true and just means, which in itself may and shall 'purport right and equity, and also consonant to reason.'

Who may take recognizance in the nature of a statute staple.

II. In consideration whereof, by the assent of the King's highness, his Lords Spiritual and Temporal, and his commons, in this present Parliament assembled, and by the authority of the same, it is enacted, ordained, and established, That from the first day of *April* next coming, the Chief Justice of the *King's Bench*, and the Chief Justice of the *Common Pleas*, which now be, or at any time hereafter shall be, and every of them by himself, and in their absence out of the term, the mayor of the staple of *Westminster*, and the Recorder of the city of *London*, for the time being, jointly together, by his or their discretions, shall have full power and authority to take recognizances or knowledges of every of the King's subjects for the payment of debts, according to such form as hereafter ensueth:

The form of the recognizance.

"Noverint universi per present' me *A. B.* & *C. D.* armig' teneri "& fermiter obligari Johanni at Style in C. li. sterling' solvend' cidem "Johanni aut suo cert' attorn' hoc scriptum ostend' hæred' vel' execut' "suis in tal' fest' &c. prox' futur' post dat' præsentium; & si defecero "*vel* defecerimus in solutione debit' prædict' volo & concedo: *vel* "*sic*, volumus & concedimus, quod tunc currat super me, hæred' & "executores meos, *vel* super nos & quemlibet nostrum, hæred' & "execut' nostros pœna in statuto stapulæ de debit' pro merchandisis in "eadem emptis recuperand' ordinat' & provis' dat' tal' die anno regni "regis, &c."

No. IX.
23 H. VIII. c. 6.

III. And that every obligation that shall be made as is aforesaid, and knowledged before any of the said chief justices, or the said mayor and recorder, according to this Act, shall be sealed with the seal of the party or parties that shall recognize or knowledge the same, and also with such seal as the King's highness shall ordain and appoint for the same, and with the seal of one of such of the said justices, or with the seals of the said mayor and recorder, and with his or their name or names subscribed, that so shall take the same recognizance or knowledge; and that every of the said two justices, and the said mayor and recorder, shall have the custody of one such seal, by the King's highness to be appointed, with one like print, scripture, and fashion, which shall severally remain with them to the intent above rehearsed.

By what seals the same obligation shall be sealed.

IV. And further be it enacted by the authority aforesaid, That such an honest and discreet person as shall be assigned by the King's highness, or the sufficient deputy or deputies of the same persons so to be assigned, shall make and write all such obligations as shall be acknowledged and recognized by authority of this Act, and shall cause the same obligations recognized, and acknowledged in form as is above said, to be inrolled in two several rolls indented, whereof one shall remain with such of the said justices, or with the said mayor and recorder, that so shall take the same recognizances in form aforesaid, and the other roll with the writer thereof, appointed for the same: and that the said person, by the King's highness to be appointed for making, writing, and inrolling such obligations, or his sufficient deputy or deputies, shall be dwelling or abiding in the said city of *London*, upon pain to forfeit for every time that he and his deputy shall be absent by the space of two days, ten pounds.

The clerk of the recognizances shall inrol them, and shall dwell in London.

By 8 G. I. c. 25, there shall be three rolls, &c.

V. And further it is enacted by authority aforesaid, That the said person so to be assigned by the King's highness to write, make, and inrol such obligations, or his sufficient deputy or his deputies, at the request of the creditors, their executors or administrators, shall certify such obligations as shall be taken and recognized by authority of this Act, into the King's Court of Chancery, under the seal of the said person so to be appointed for writing, making, and inrolling such obligations.

Certificate of the recognizance in the Chancery.

VI. And that every person and persons to whom such obligation shall be made, knowledged, and inrolled (as is aforesaid) their executors and administrators, and the executors and administrators of every of them, for default of payment of the debts contained in such obligations, shall have in every point, degree, and condition, against the said recognizor and recognizors, and every of them, their heirs, executors, and administrators, and the heirs, executors, and administrators of every of them, like process, execution, commodity, and advantage in every behalf, as hath been used and accustomed before this time to be had, done, or made, of and upon any obligation of the statute of the staple, and under such manner and form, as is for the same statute of the staple provided, paying for such process, and execution to be had, such like fees as is accustomed for process and execution to be had upon obligations of the same statute of the staple, and not above.

Execution upon a recognizance acknowledged according to this statute.

VII. And that every such person and persons that shall be bounden, or otherwise grieved by virtue of any obligation to be made by authority of this Act, shall have their like remedy by *audita querela*, and all other remedies in the law, that they might have had in case they had been bounden by obligation of the statute of the staple.

Where the recognizor shall be relieved by audita querela.

VIII. And that every such person and persons that shall have process for execution to be had by reason of any such obligation to be made and knowledged according to this Act, shall pay to the King's highness, his heirs or successors, at the time of ensealing of the process for execution to be had, one halfpenny for every pound that shall be contained in the obligation, whereof execution shall be required, and not above.

The King shall have 1 ob. in the pound upon execution sued.

IX. And that every such person and persons that shall happen to have

No. IX.
23 H. VIII.
c. 6.

The remedy for tenant by recognizance being disseised.

any execution of any lands, tenements, or hereditaments, by reason of any such obligations to be made and knowledged (as is abovesaid) their executors, administrators, or assigns, and the executors, administrators, and assigns of every of them, if they, or any of them, being put out or disseised, shall have like remedy in every point and condition, as persons having execution in and upon any statute of the staple, after execution to them had, may or might have, by virtue of the said writing obligatory of the statute of the staple, and execution of the same.

The justice's clerk's fee upon every recognizance.

X. And further be it enacted by the authority aforesaid, That every of the said justices, and the said mayor and recorder before whom any such obligations shall be recognized, shall take for every knowledge of every one such recognizance *iii.s. iv.d.* and not above; and the clerk that shall write, make, and inrol the same obligations, *iii.s. iv.d.* and for the certificate of every one such obligation *xx.d.* and if any of the said justices, mayor, recorder, or clerk, take any of the King's subjects above the sum or sums to them limited by this estatute, that then the said justices, mayor, recorder, or clerk, that so shall take contrary to the form aforesaid, shall forfeit for every time so offending *xl.li.*

In what cases recognizance or statute staple may be taken by the mayor and constables of the staple, and in what not.

XI. And further it is enacted by the authority aforesaid, That from the said first day of *April*, no mayor or constable of the staple, for the payment of any sum or sums of money, take any knowledge or recognizance of the said statute of the staple, of any of the King's subjects, upon pain to forfeit for every time so offending, *xl. li.* the one moiety of all and singular the said penalties to be to the King's Highness, and the other moiety to the party that will sue for the same; for the recovery whereof the party that will pursue shall have his remedy by information, action of debt, bill, or plaint in any of the King's courts, in which no essoign, protection, or wager of law shall be admitted. Provided alway, That this Act, nor any thing therein contained, be in any wise prejudicial or hurtful to any mayor or constables of the staple for any bond or writing of the statute of the staple to be taken or received between merchants being free of the same staple, for merchandize of the same staple between them lawfully bought and sold.

Recognisances taken before the statute 11 Edw. I. stat. 1. c. 45.

XII. Provided also, and be it enacted by the authority aforesaid, That all recognizances before this time taken, before the mayor and constables of any of the said staples, whereof the sums now be not paid, nor otherwise contented, lawfully avoided, and discharged by the law, shall be as good and effectual as though they had been verily made for merchandize of the same staple, and between merchant and merchant, of the same staple, and as they should have been, if this Act had never been had ne made.

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## [ No. X. ] 32 Henry VIII. c. 5.—For the Continuation of Debts upon Execution.

32 Henry VIII. c. 5.

A remedy for the cognizee or obligee, where lands delivered to him in execution be recovered from him.

'WHEREAS before this time divers and sundry persons have sued 'executions, as well upon judgments for them given of their 'debts and damages, as upon such statutes merchant, statutes of the sta'ple or recognizances, as have been to them before made, recognized, 'and knowledged, and thereupon such lands, tenements and other he'reditaments as were liable to the same execution, have been by rea'sonable extent to them delivered in execution for the satisfaction of 'their said debts and damages, according to the laws of this realm; ne'vertheless it hath been oftimes seen, that such lands, tenements and 'hereditaments, so delivered and had in execution, have been recovered 'or lawfully divested, taken away, or evicted from the possession of 'the said recoverors, obligees or recognizees, their executors or assigns, 'before such time as they have been fully satisfied and paid off their 'said debts and damages, without any manner fraud, deceit, covin, col'lusion or other default in the said recoverors, obligees, or recognizees,

No. X.
32 Hen. VIII.
c. 5.

'their executors or assigns; by reason whereof the said recoverors, 'obligees and recognizees have been thereby set clearly without remedy 'by any manner suit of the law, to recover or come by any such part or 'parcel of their said debts and damages as was behind, and not by them 'levied or received before such time as the said lands, tenements, and 'other hereditaments, so by them had in execution, were recovered, 'lawfully divested, taken or evicted out of and from their possessions, 'as is aforesaid, to their great hurt and loss, and much seeming to be 'against equal justice and good conscience;' for reformation whereof, be it enacted by authority of this present Parliament, That if hereafter any such lands, tenements or hereditaments, as be, or shall be had and delivered to any person or persons in execution, as is aforesaid, upon any just and lawful title, matter, condition or cause, wherewithal the said lands, tenements, and hereditaments were liable, tied and bound at such time as they were delivered and taken into execution, shall happen to be recovered, lawfully divested, taken or evicted out of and from the possession of any such person and persons, as now have and hold, or hereafter shall have and hold the same in execution, as is aforesaid, without any fraud, deceit, covin, collusion or other default of the said tenant or tenants by execution, before such time as the said tenants by execution, their executors or assigns, shall have fully and wholly levied or received the said whole debt and damages, for the which the said lands, tenements and other hereditaments were delivered and taken in execution as is aforesaid; then every such recoveror, obligee and recognizee, shall and may have and pursue a writ of *scire facias* out of the same court from whence the said former writ or execution did proceed, against such person or persons as the said writ of execution was first pursued, their heirs, executors or assigns, of such lands, tenements, or hereditaments as were or been then liable or charged to the said execution, returnable into the same court at a certain day, being full forty days after the date of the same writ; at which day if the defendant, being lawfully warned, make default, or appear and do not shew and plead a sufficient matter or cause (other than the acceptance of the said lands, tenements or hereditaments by the said former writ of execution) to bar, avoid or discharge the said suit for the residue of the said debt and damages remaining unlevied or unreceived by the said former execution, then the Lord Chancellor, or other such justice or justices before whom such writ of *scire facias* shall be returnable, shall make eftsoons a new writ or writs out of the said record of judgment, statute merchant, statute staple or recognizance of like nature and effect as the said former writ of execution was, for the levying of the residue of all such debt and damage as then shall appear to be unlevied, unsatisfied or unpaid of the whole sum or sums in the said former writ of execution contained; any law, custom, or other thing to the contrary heretofore used in any wise notwithstanding.

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## [ No. XI. ] 29 Elizabeth, c. 4.—An Act to prevent extortion in sheriffs, under-sheriffs, and bailiffs of franchises or Liberties in Cases of Execution.

29 Elizabeth, c. 4.

BE it enacted by the authority of this present Parliament, That it shall not be lawful, from the first day of *May* now next ensuing, to or for any sheriff, under-sheriff, bailiff of franchises or liberties, nor for any of their or either of their officers, ministers, servants, bailiffs, or deputies, nor for any of them, by reason or colour of their or either of their office or offices, to have, receive, or take of any person or persons whatsoever, directly or indirectly, for the serving and executing of any extent or execution upon the body, lands, goods or (1) chattels of any person or persons whatsoever, more or other consideration or recompence, than in this present Act is and

(1) A substitution of *and* for *or*, in reciting this statute, ruled to be a fatal variance; R. v. Marsack, 6 T. R. 771.

No. XI. 29 Elizabeth, c. 4.

How much the sheriff may take for the serving of an execution.

shall be limited and appointed, which shall be lawful to be had, received and taken, that is to say, twelve pence of and for every twenty shillings, where the sum exceedeth not one hundred pounds, and six pence of and for every twenty shillings being over and above the said sum of one hundred pounds, that he or they shall so levy or extend, and deliver in execution, or take the body in execution for, by virtue and force of any such extent or execution whatsoever, upon pain and penalty that all and every sheriff, under-sheriff, bailiff of franchises and liberties, their and every of their ministers, servants, officers, bailiffs or deputies, which at any time after the said first day of *May* now next ensuing shall directly or indirectly do the contrary (1) shall lose and forfeit to the party grieved his treble damages (2), and shall forfeit the sum of forty pounds of good and lawful *English* money for every time that he, they or any of them shall do the contrary; the one moiety thereof to be to our Sovereign Lady the Queen, her heirs and successors, and the other moiety thereof to the party or parties that will sue for the same, by any plaint, action, suit, bill or information, wherein no essoign, wager of law, or protection shall be allowed. (3)

The forfeiture of the offender, and how it shall be recovered.

Fees for executions within cities or towns corporate.

II. Provided always, That this Act, or any thing therein contained, shall not extend to any fees to be taken or had for any execution within any city or town corporate; any thing above mentioned to the contrary thereof notwithstanding.

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## [ No. XII. ] 1 James I. c. 13.—An Act for new Executions to be sued against any which shall hereafter be delivered out of Execution by Privilege of Parliament, and for Discharge of them out of whose Custody such Persons shall be delivered.

1 James I. c. 13.

'FORASMUCH as heretofore doubt had been made, if any person 'being arrested in execution, and by privilege of either of the 'Houses of Parliament set at liberty, whether the party at whose suit 'such execution was pursued, be for ever after barred and disabled to 'sue forth a new writ of execution in that case:'

An execution against him who is discharged by privilege of Parliament.

II. For the avoiding of all further doubt and trouble which in like cases may hereafter ensue, be it enacted by the King's most excellent Majesty, by the Lords Spiritual and Temporal, and by the Commons, in this present Parliament assembled, That from henceforth the party at or by whose suit such writ of execution was pursued, his executors or administrators, after such time as the privilege of that session of Parliament in which such privilege shall be so granted shall cease, may sue forth and execute a new writ or writs of execution, in such manner and form as by the law of this realm he or they might have done, if no such former execution had been taken forth or served: And that from henceforth no sheriff, bailiff or other officer, from whose arrest or custody any such person so arrested in execution shall be delivered by

He shall never be charged out of whose cus-

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(1) The poundage includes all charges; and nothing can be charged for the expense of an auctioneer and if more is taken by a bailiff than the statute allows, the action is maintainable against the sheriff. And by Buller J. "In actions on simple contracts and judgments for a debt certain, the expense of levying must be paid by the plaintiff and not by the defendant; so that if the sheriff overcharge, the plaintiff is the sufferer. But if the judgment be for a penalty, the plaintiff has a right to receive the whole of his debt, independent of the expenses of the execution; and in those cases the defendant is the party injured by the sheriff's taking more than he ought;" Woodgate *v.* Knatchbull, 2 T. R. 148. But by stat. 43 Geo. III. c. 46, (ante, Cl. III. No. 36). the plaintiff may levy the costs of the execution in all cases, and therefore the defendant is the party grieved if more is levied than the Act allows. I apprehend that this statute and the case cited are in practice very generally disregarded, and that the under-sheriff usually requires to be paid the whole of the poundage, and leaves the officer to obtain satisfaction by extorting illegal fees.

(2) In an action on the 29th Eliz. c. 4., the plaintiff is entitled to treble costs, as well as treble damages; Deacon *v.* Morris, 2 B. & A. 393.

(3) The plaintiff in such action is entitled to costs; Tyte *v.* Glode, 7 T. R. 267.

No. XII. 1 James I. c. 13.

any such privilege, shall be charged or chargeable with or by any action whatsoever, for delivering out of execution any such privileged person, so as is aforesaid by such privilege of Parliament set at liberty; any law, custom or privilege heretofore to the contrary notwithstanding.

tody such prisoner shall be delivered.

III. Provided always, That this Act, or any thing therein contained, shall not extend to the diminishing of any punishment to be hereafter by censure in Parliament inflicted upon any person which hereafter shall make or procure to be made any such arrest as is aforesaid.

Censure inflicted upon any that shall arrest a Parliament-man.

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## [ No. XIII. ] 3 James I. c. 8.—An Act to avoid unnecessary Delays of Executions.

3 James I. c. 8.

'FORASMUCH as his Highness subjects are now more commonly 'withholden from their just debts, and often in danger to lose the 'same, by means of writs of error, which are more commonly sued 'than heretofore they have been:' Be it therefore enacted by the authority of this present Parliament, That from and after the end of this present session of Parliament, no execution shall be stayed or delayed upon or by any writ of error, or *supersedeas* thereupon to be sued, for the reversing of any judgment given, or to be given, in any action or bill of debt upon any single bond for debt; or upon any obligation, with condition for the payment of money only; or upon any action or bill of debt for rent, or upon any contract; (1) sued in any of his Highness courts of record at *Westminster*, or in the counties palatine of *Chester*, *Lancaster*, or *Durham*, or in his Highness courts of Great Sessions in any of the twelve shires of *Wales;* unless such person or persons in whose name or names such writ of error shall be brought, with two sufficient sureties, such as the court (wherein such judgment is or shall be given) shall allow of, shall first before such stay made, or *supersedeas* to be awarded, be bound unto the party for whom any such judgment is or shall be given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said former judgment,

In what cases execution shall not be stayed upon a writ of error.

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(1) Bail in error is not necessary, under this statute, in debt for goods solds; Alexander *v.* Bliss, 7 T. R. 449; or on a promissory note; Frier *v.* Bridgman, 2 E. 359: nor in debt or bond, conditioned for payment of money and performance of covenants; Butler *v.* Brushfield, 10 E. 407; nor a *scire facias*, on judgment by demurrer, on 8 and 9 W. III. c. 11. s. 8. post in this Class; Sparks *v.* O'Kelly, 1 Taunt. 168: nor in any case where, upon any one taint, debt would not lie at the time of making the statute; Webb *v.* Geddes, 1 Taunt. 540. See other cases, in which bail in equity is required, 13 Chas. II. st. 2. c. 2. ante, Class III. No. 13. And by 16 and 17 Charles II. ch. 8. s. 3. (post, No. 17.) bail in error is required in all personal actions after judgment. From the experience of the great mischiefs and inconveniences resulting from writs of error and injunctions in equity, for the purpose of delaying executions, I think it would be important to give a further protection to persons in whose favour judgment has been obtained, and to provide that no execution should be stayed without the express order of the court, or one of the judges of the court, by which the judgment was given, or from which the writ of error has issued; or from the Lord Chancellor in case of error in Parliament; and that no execution shall be stayed by injunction, except upon affidavit of the merits, and express order of the Court of Equity, or of the court in which judgment was given, or one of the judges thereof.

A similar principle has already been adopted by the House of Lords and the Court of Chancery, in cases of appeals, which do not stay the performance of the decree without express order.

In Johnes *v.* Johnes, Dows. P. C. 22. Lord Eldon C. said, "he had now been there for twelve years, attending to writs of error, and he found, that not more than one in fifty was argued; so that forty-nine out of fifty were brought for delay. *Delay was one of the greatest mischiefs in the administration of justice*, and as far as that could be decided by giving exemplary costs, their lordships would be disposed to check it." Surely this testimony is of great importance, and the mischief complained of is very little diminished by any possible operation of the checks at present existing. The loss of official emoluments, which might perhaps operate as an impediment to any proposal for correcting the existing abuse, could be easily compensated by a very moderate charge upon executions in general.

No. XIII. 3 James I. c. 8.

to prosecute the said writ of error with effect, and also to satisfy and pay (if the said judgment be affirmed) all and singular the debts, damages, and costs adjudged, or to be adjudged upon the former judgment; and all costs and damages to be also awarded for the same delaying of execution. (1) This Act to have continuance to the end of the first session of the next Parliament. [Made perpetual by 3 Car. I. c. 4. sect. 4. 16 & 17 Car. II. c. 8.]

## [ No. XIV. ] 21 James I. c. 24.—An Act for the Relief of Creditors against such Persons as die in Execution.

21 James I. c. 24.

'FORASMUCH as heretofore it hath been much doubted and questioned, if any person being in prison and charged in execution by reason of any judgment given against him, should afterwards happen to die in execution, whether the party at whose suit or to whom such person stood charged in execution at the time of his death, be for ever after concluded and barred to have execution of the lands and goods of such persons so dying:'

A new execution may be awarded against the lands of him that dies in execution.

'II. And forasmuch as daily experience doth manifest, that divers persons of sufficiency in real and personal estate, minding to deceive others of their just debts for which they stood charged in execution, have obstinately and wilfully chosen rather to live and die in prison than to make any satisfaction according to their abilities:' To prevent which deceit, and for the avoiding of such doubts and questions hereafter; Be it declared, explained and enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That from and after the end of this present session of Parliament, the party or parties, at whose suit or to whom any person shall stand charged in execution for any debt or damages recovered, his or their executors or administrators, may, after the death of the said person so charged and dying in execution, lawfully sue forth and have new execution against the lands and tenements, goods and chattels, or any of them, of the person so deceased, in such manner and form to all intents and purposes, as he or they or any of them might have had by the laws and statutes of this realm, if such person so deceased had never been taken or charged in execution. (2)

This Act shall not extend to lands sold *bona fide*.

III. Provided always, and be it declared and enacted, That this Act shall not extend to give liberty to any person or persons, their executors or administrators, at whose suit or suits any such party shall be in execution, and die in execution, to have or take any new execution against any the lands, tenements or hereditaments of such party so dying in execution, which shall at any time after the said judgment or judgments be by him sold *bona fide*, for the payment of any of his creditors, and the money which shall be paid for the lands so sold, either paid or secured to be paid to any of his creditors, with their privity and consent, in discharge of his or their due debts, or of some part thereof; any thing before in this Act to the contrary thereof in any wise notwithstanding.

## [ No. XV. ] 13 Charles II. st. 2. c. 2.—An Act for Prevention of Vexations and Oppressions by Arrests, and of Delays in Suits of Law.

[Inserted *ante*, Class III. No. 13.]

(1) Bail in error being liable for the debt, or damages and costs, and not merely for the surrender of the principal, are not entitled to relief upon the principal becoming bankrupt; Southcott *v.* Braithwaite, 1 T. R. 624; and are not discharged by the principal being taken in execution after affirmance; Perkins *v.* Petit, 2 B. & P. 440.

(2) By the Irish statute 35 Geo. III. c. 30. s. 1. a person who has charged or detained his debtor in execution by *ca. sa.* should have the same execution against the lands or goods as if he had not charged or detained him; see 2 Gabbett 292.

## [ No. XVI. ] 16 and 17 Charles II. c. 5.—An Act to prevent Delays in extending Statutes, Judgments, and Recognizances.

No. XVI. 16 & 17 C. II. c. 5.

'WHEREAS the security by statute merchant and of the staple is 'now become of little use and benefit by the fraud of the conu-'sors thereof in sundry cases, who, to prevent the payment of their 'debts, secretly assign small parts of their lands to several and unknown 'persons: And it having been used, that if the creditor take execution 'on such statute, yet if the lands of any one or more person or persons 'to whom such alienation was made, and liable to such execution, be 'omitted out of such extent; the same execution hath been avoided by 'audita querela, and the party extending lost his costs, and was delayed 'of his just debt; and so again upon any new extent *toties quoties*; and 'if any one acre or parcel of land happened to descend to an infant, the 'whole execution was deferred till full age of such infant; and if after-'wards other part of the lands or tenements liable to such debt descended 'to another infant, then also a farther delay happened during that 'infancy also:'

Security by statute merchant, and of the staple.

Executions avoided by *audita querela.*

II. Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, That when any judgment, statute, or recognizance shall be extended, the same shall not be avoided or delayed by occasion that any part of the lands or tenements extendible are or shall be omitted out of such extent; saving always to the party and parties whose lands shall be extended, his and their heirs, executors, and assigns, his and their remedy for contribution against such person and persons, whose lands are or shall be omitted out of such extent from time to time.

Forwhat causes extents upon judgments or statutes shall not be avoided or delayed.

III. Provided always, That this Act or any thing therein contained shall not be construed to give any extent or contribution against any heir within the age of one and twenty years, during such minority of such heir, for or in respect of any lands to such heir descended, farther or otherwise than might have been before the making of this Act.

Proviso for heirs within age.

IV. Provided that this Act extend only to such statutes as are or shall be for payment of monies; and to such extent as shall be within twenty years after the statute, recognizance, or judgment had and obtained.

V. Provided that this Act shall continue for the space of three years, and from thence to the end of the next Session of Parliament, and no longer. [Made perpetual by 22 and 23 Car. II. c. 2.]

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## [ No. XVII. ] 16 and 17 Charles II. c. 8.—An Act to prevent Arrests in Judgment, and superseding Executions.

16 & 17 C. II. c. 8.

III. AND be it further enacted by the authority aforesaid, That from and after the twentieth day of *March*, in the year of our Lord One thousand six hundred sixty and four, no execution shall be stayed in any of the aforesaid courts by writ of error or *supersedeas* thereupon, after verdict and judgment thereupon, in any action personal whatsoever, unless a recognizance, with condition according to the statute made in the third year of the reign of our late Sovereign Lord King *James*, shall be first acknowledged in the court where such judgment shall be given: And further, That in writs of error to be brought upon any judgment after verdict in any writ of dower, or in any action of *ejectione firmæ*, no execution shall be thereupon or thereby stayed, unless the plaintiff or plaintiffs in such writ of error shall be bound unto the plaintiff in such writ of dower, or action of *ejectione firmæ*, in such reasonable sum as the court to which such writ of error shall be directed shall think fit, with condition, that if the judgment shall be affirmed in

In what cases execution shall not be stayed by writ of error, but upon recognizance entered according to 3 Jac. I. c. 8.

No. XVII. 16 & 17 C. II. c. 8.

the said writ of error, or that the said writ of error be discontinued in default of the plaintiff or plaintiffs therein, or that the said plaintiff or plaintiffs be nonsuit in such writs of error, that then the said plaintiff or plaintiffs shall pay such costs, damages, and sum and sums of money, as shall be awarded upon or after such judgment affirmed, discontinuance or nonsuit had.

[See the Act at large, *ante*, Class VI. No. 13.]

## [ No. XVIII. ] 17 Charles II. c. 8.—An Act for avoiding unnecessary Suits and Delays.

17 Charles II. c. 8.

FOR the avoiding of unnecessary suits and delays, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, That in all actions personal, real, or mixt, the death of either party between the verdict and the judgment, shall not hereafter be alleged for error, so as such judgment be entered within two terms after such verdict. (1)

II. And be it further enacted by the authority aforesaid, where any judgment after a verdict shall be had, by or in the name of any executor or administrator, in such case an administrator *de bonis non* may sue forth a *scire facias*, and take execution upon such judgment.

III. This Act to continue for the space of five years, and from thence to the end of the next Session of Parliament. [Made perpetual by 1 Jac. II. c. 17. § 5.]

## [ No. XIX. ] 29 Charles II. c. 3.—An Act for Prevention of Frauds and Perjuries.

29 Charles II. c. 3. Lands, &c. shall be liable to the judgments, &c. of *cestuy que trust*;

X. AND be it further enacted by the authority aforesaid, That from and after the said four and twentieth day of *June* it shall and may be lawful for every sheriff or other officer to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for and upon any judgment, statute or recognizance hereafter to be made or had, to do, make and deliver execution unto the party in that behalf, suing, of all such lands, tenements, rectories, tithes, rents and hereditaments, as any other person or persons be in any manner of wise seised or possessed, or hereafter shall be seised or possessed, in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done, if the said party against whom execution hereafter shall be so sued, had been seized of such lands, tenements, rectories, tithes, rents or other hereditaments of such estate as they be seized of in trust for him at the time of the said execution sued; which lands, tenements, rectories, tithes, rents and other hereditaments, by force and virtue of such execution, shall accordingly be held or enjoyed, freed and discharged from all incumbrances of such person or persons as shall be so seized or possessed in trust for the person against whom such execution shall be sued; and if any *cestuy que trust* hereafter shall die, leaving a trust in fee-simple to descend to his heir, there and in every such case such trust shall be deemed and taken, and is hereby declared to be, assets by descent, and the heir shall be liable to and chargeable with the obligation of his ancestors for and by reason of such assets, as fully and amply as he might or ought to have been, if the

and held free from the incumbrances of the persons seised in trust.

Trust shall be assets in the hands of heirs.

(1) Upon this statute the judgment is entered for or against the party as though he were alive, (1 Salk. 42); and it should be entered, or at least signed, (1 Sid. 385. Barnes, 261) within two terms after the verdict. But there must be a *scire facias* to revive it before execution, (1 Wils. 302) and such *scire facias*, pursuing the form of the judgment, should be general, (2 Ld. Raym. 1280) as in a judgment recovered by or against the party himself; Tidd, chap. 42. If the plaintiff dies after the assizes begin, though the trial be after his death, that is within the remedy of the statute; Anon. 1 Salk. 8

estate in law had descended to him in possession in like manner as the trust descended; any law, custom or usage to the contrary notwithstanding.

No. XIX. 29 Charles II. c. 3.

XIV. Be it enacted by the authority aforesaid, That from and after the said four and twentieth day of *June*, any judge or officer of any of his Majesty's Courts of *Westminster*, that shall sign any judgments, shall, at the signing of the same, without fee for doing the same, set down the day of the month or year of his so doing upon the paper book, docket or record which he shall sign; which day of the month and year shall be also entered upon the margent of the roll of the record where the said judgment shall be entered.

The day of signing any judgment shall be entered on the margent of the roll.

tends to counties palatine by 8 Geo. I. c. 25. sect. 6.

XV. And be it enacted, That such judgments as against purchasers *bona fide* for valuable consideration of lands, tenements or hereditaments to be charged thereby, shall in consideration of law be judgments only from such time as they shall be so signed, and shall not relate to the first day of the term whereof they are entered, or the day of the return of the original or filing the bail; any law, usage or course of any court to the contrary notwithstanding.

And such judgments as against purchasers shall relate to such time only.

XVI. And be it further enacted by the authority aforesaid, That from and after the said four and twentieth day of *June* no writ of *fieri facias* or other writ of execution shall bind the property of the goods against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under sheriff, or coroners, to be executed: And for the better manifestation of the said time, the sheriff, under-sheriff and coroners, their deputies and agents, shall upon the receipt of any such writ, (without fee for doing the same) endorse upon the back thereof the day of the month or year whereon he or they receive the same.

Writs of execution shall bind the property of goods but from the time of their delivery to the officer.

[The Act at large is inserted *ante*, Part II. Class I. No. 17.]

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## [ No. XX. ] 4 and 5 William and Mary, c. 20.—An Act for the better Discovery of Judgments in the Courts of *King's Bench, Common Pleas*, and *Exchequer*, at *Westminster*.

4 & 5 W. & M. c. 20.

'WHEREAS great mischiefs and damages happen and come, as well to persons in their life-times, but more often to their heirs, executors and administrators, and also to purchasers and mortgagees, by judgments entered upon record in their Majesties' Courts at *Westminster*, against the persons defendants, by reason of the difficulty there is in finding out such judgments;' For remedy whereof,

Judgments to be doggetted.

II. Be it enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That the clerk of the essoigns of the Court of *Common Pleas*, every clerk of the doggets of the Court of *King's Bench*, and the master of the office of pleas in the Court of *Exchequer* for the time being, shall before the last day of *Easter* term next coming, and so in every *Easter* term after, make or cause to be made and put into an alphabetical dogget by the defendants' names, a particular of all judgments for debt by confession, *non sum informatus*, or *nihil dicit*, entered in the said respective courts, of the term of *Saint Hilary* preceding, which shall contain the name and names of the plaintiff and plaintiffs, the name and names of the defendant and defendants, his, her, or their place or places of abode, and title, trade, or profession (if any such be in the record of the said judgment), and the debt, damages, and costs recovered thereby; and in what county, city, or town the respective actions were laid, and the number roll of the entry thereof; and also that every clerk of the judgments, and every other clerk of the said court of *Common Pleas* and *King's Bench* respectively, shall, within ten days before the

No. XX. 4&5 W. & M. c. 20.

time aforesaid, bring to the respective clerks of the doggets of the said respective courts, notes in writing of all the judgments by them and every of them respectively entered, of the said term of *Saint Hilary*, upon verdicts, writs of inquiry, demurrer, and every other judgment for debt or damages, in all things as aforesaid; and also that the clerk of the judgments, and every other clerk of the said Court of *Exchequer*, shall, within the times aforesaid, bring to the said master of the said office of pleas, the like note in writing of all the like judgments by him or them respectively entered of the said term, in all things as aforesaid; to the end the same may be (by the clerk of the essoigns of the said Court of *Common Pleas*, the clerk of the doggets of the said Court of *King's Bench*, and master of the office of pleas) respectively entered in the respective doggets before mentioned, in manner and form aforesaid; and also that the respective officers and clerks of the said respective courts shall likewise, before the last day of the term of *Saint Michael* also next coming, and in every *Michaelmas* term after, make, or cause to be made, as aforesaid, the like dogget, containing all such judgments in the said respective courts, of the respective terms of *Easter* and *Trinity* then last past, and the names of the plaintiffs and defendants, titles and additions, debt and damages, in all things as aforesaid; and also that the said respective officers and clerks of the said respective courts shall likewise, before the last day of the term of *Saint Hilary*, which shall be in the year of our Lord One thousand six hundred ninety and three, and so in every *Hilary* term after, make, or cause to be made, the like dogget, containing all such judgments in the said respective courts, of the term of *Saint Michael* then last past, with the names of the plaintiffs and defendants, titles and additions, debts and damages in all things as aforesaid; and that the said respective doggets shall be fairly put into and kept in books in parchment in the respective offices of the respective officers before named, to be searched and viewed by all persons at all reasonable times, paying to the respective officers, in whose keeping the said books respectively shall be, for every term's search for judgments against any one person, fourpence, and no more; upon pain that every clerk of essoigns of the Court of *Common Pleas*, clerk of the doggets of the *King's Bench*, and master of the office of pleas in the Court of *Exchequer*, clerks of the judgments, and every clerk before mentioned respectively, shall, for every term, in which he shall omit or neglect to do his duty in the premises, forfeit the sum of one hundred pounds; the one moiety to the party or parties aggrieved, and the other moiety to him or them who shall sue for the same in any of their Majesty's Courts of Record at *Westminster*, wherein no privilege, or essoign, or protection of law, shall be admitted, nor any more than one imparlance.

Fee for search.

Penalty.

Judgments not doggetted shall not affect purchasers, &c.

III. And be it further enacted by the authority aforesaid, That no judgment, not doggetted and entered in the books as aforesaid, shall affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors or administrators, in their administration of their ancestors, testators, or intestates estates.

Fee to the clerk of the judgments.

'IV. And whereas the clerks of the judgments of the said respective 'courts are to be at great charge and trouble in the execution of this 'Act;' For recompence whereof be it enacted by the authority aforesaid, That hereafter there shall be paid by the plaintiff or plaintiffs in every of the said judgments upon verdicts, writs of inquiry, demurrer, and every other judgment by them respectively to be entered, over and above the fees now due for the same, the sum of fourpence, and no more.

Act to continue one year.

V. Provided always, and be it enacted by the authority aforesaid, That this Act shall continue and be in force for one year, from the five and twentieth day of *March*, One thousand six hundred ninety and three, and from thence to the end of the next Session of Parliament, and no longer. [Continued a year longer by 6 & 7 W. 3. cap. 14. and made perpetual by 7 and 8 W. 3. cap. 36. sect. 3.]

## [ No. XXI. ] 8 and 9 William III. c. 11.—An Act for the better preventing frivolous and vexatious Suits.

No. XXI. 8 & 9 W. III. c. 11.

[For the preceding Sections see the last Class.]

Plaintiff or defendant dying before final judgment obtained, action not to abate, &c.

VI. AND be it further enacted, That in all actions to be commenced in any court of record, from and after the said five and twentieth day of *March* One thousand six hundred ninety and seven, if any plaintiff happen to die after an interlocutory judgment, and before a final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executors or administrators of such plaintiff; and if the defendant die after such interlocutory judgment and before final judgment therein obtained, the said action shall not abate, if such action might be originally prosecuted or maintained against the executors or administrators of such defendant; and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators, shall and may have a *scire facias* against the defendant, if living after such interlocutory judgment, or if he died after, then against his executors or administrators, to shew cause why damages in such action should not be assessed and recovered by him or them; (1) and if such defendant, his executors or administrators, shall appear at the return of such writ, and not shew or allege any matter sufficient to arrest the final judgment, or being returned warned, or upon two writs of *scire facias* it be returned that the defendant, his executors or administrators, had nothing whereby to be summoned, or could not be found in the county, shall make default, that thereupon a writ of inquiry of damages shall be awarded, which being executed and returned, judgment final shall be given for the said plaintiff, his executors or administrators, prosecuting such writ or writs of *scire facias*, against such defendant, his executors or administrators, respectively. (2)

On execution, a final judgment to be given.

Actions may proceed, notwithstanding the death of one of the parties.

VII. And be it further enacted by the authority aforesaid, That if there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; (3) but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants. (4)

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(1) Where either party dies after interlocutory judgment, and before the execution of the writ of inquiry, the *scire facias* upon this statute ought to be for the defendant or his executors, &c. to shew cause why the damages should not be assessed and recovered against them, (Lill. Entr. 647.) and to have the judgment of the court thereupon, (6 Mod. 144.) But when the death happens after the writ of inquiry is executed, and before final judgment, the *scire facias* must be to shew cause why the damages assessed should not be adjudged to the plaintiff or his executors or administrators, (1 Wils. 243; and see 1 T. R. 388.) The judgment upon this statute is not entered for or against the party himself, as upon 17 Car. II., but for or against his executors or administrators, (1 Salk. 42.) And where the defendant dies after interlocutory and before final judgment, two writs of *scire facias* must be sued out by the plaintiff before he can have execution, one before the final judgment is signed, in order to make the executors or administrators parties to the record, and the other after final judgment is signed, in order to give them an opportunity of pleading no assets, or other matter of defence; Tidd's Practice, chap. 42.

(2) Where a *habeas corpus* was brought after interlocutory and before final judgment, in an inferior court, and the defendant died before the return of it, a *procedendo* was awarded; because by this statute the plaintiff may have a *scire facias* against the executors, and proceed to judgment, which he cannot have in another court, and by this means he would be deprived of the judgment, which would be unreasonable; 1 Salk. 352; Tidd, ch. 17.

(3) This section applies to writs of error, &c.; therefore a writ of error does not abate by the death of one of several plaintiffs in error. Clarke *v.* Rippon, 1 B. and A. 586.

(4) If the death happen before issue joined, it should be suggested on making up the issue, but otherwise it need not be suggested till the plea roll is made up; 1 Bur. 363. And where one of two plaintiffs died before the interlocutory judgment, and the suit notwithstanding went on to execution in the name of both; on a motion to set aside the proceedings for this irregularity, the court permitted the surviving plaintiff to suggest the death of the other in the roll, and to amend the *ca. sa.* without payment

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In actions on bonds, &c. plaintiff may assign as many breaches as he pleases.

Jury may assess damages.

VIII. And be it further enacted, That in all actions, which from and after the said five and twentieth day of *March*, One thousand six hundred ninety and seven, shall be commenced or prosecuted in any of his Majesty's courts of record, upon any bond or bonds, or on any penal sum, for non-performance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury, upon trial of such action or actions, shall and may assess, not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned, as the plaintiff upon the trial of the issues shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession, or *nihil dicit*, the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, (1) upon which shall

of costs; 5 T. R. 577. But as no new person is introduced, there is no occasion for a *scire facias* in those cases to revive the judgment; Tidd, ch. 42.

(1) In the following passage (extracted from a general dissertation on the law of penal obligations, inserted in the appendix to the translation of Pothier,) it is attempted to take a general view of the law respecting the relief given against a penalty, both in the construction of this statute and in the practice of courts of equity, and of the principles which seem fairly applicable to the stipulation of a particular compensation by way of penalty or damages. The freedom of observation indulged with respect to the judgment of one of the most distinguished magistrates who ever adorned the judicial tribunals of the country, may probably be thought to require an apology; but I hope that such apology will be offered in the wish to subject the justice of the observations commented upon to a fair examination, according to their intrinsic force and justice, without being diverted from that pursuit by the merited eminence of the illustrious person from whom they proceeded.

"The effect of penal obligations is, according to the jurisprudence of this country, circumscribed within much narrower limits than their literal import. With respect to the interposition of courts of equity, Lord Thurlow stated, in the case of Sloman *v.* Walter, 1 Bro. 418. that the rule that where a penalty is inserted merely to secure the enjoyment of a collateral object, the enjoyment of the object is considered as the principal intent of the deed, and the penalty only as accessional, and therefore, only to secure the damage really incurred, was too strongly established in equity to be shaken. In the particular case it was agreed, that a partnership should be conducted entirely by one of the partners; but that the other should have the enjoyment of a particular room whenever he thought proper; and a bond being given to enforce the agreement, his lordship seems to have been of opinion, that the case was within the rule, as he continued the injunction to the hearing. The following are some of the cases which had previously been decided upon this subject:—Sale gave a bond to Ryland in 20*l.*, not to disparage his trade, and afterwards seeing a customer of Ryland's cheapening a parcel of flounders, he said to him, "Why would you buy of Ryland? those fish stink." Ryland put the bond in suit, and had a verdict: and it was held that equity would not relieve, because of the smallness of the sum; but the Lord Keeper said, it would be otherwise were the penalty greater, as 100*l.* or upwards; 1 Cham. 183; 1 Eq. Ab. 91.

On the sale of an estate, it was agreed that the purchaser should retain 400*l.* for two years, without interest; and if the wife of the seller in that time released her dower, he was to pay the 400*l.*, or else retain it absolutely. The seller having died, his widow did not release her dower, but brought a writ of dower, and died before the recovery of it. A bill was filed for the 400*l.*, because it was but in the nature of the penalty to secure against the dower, which was then at an end, and the purchaser was secured as well as if she had released within the two years, or after the two years had expired; in which case, as it was said, the court would certainly have relieved. On the other side, it was said, that this was not in the nature of the penalty, but the term of the agreement, and the measure of the satisfaction for the contingent incumbrance of dower; and that the court would not have relieved on her release, much less when she was so far from releasing that she brought her writ of dower, and if she had recovered it, and lived several years, the purchaser could have had only the 400*l.*; and as he run the hazard of her living, he ought to have the advantage of her dying; and of this opinion was the Lord Chancellor, and decreed accordingly; Small *v.* Lord Fitzwilliam, Prec. Chan. 102.

In Aylet *v.* Dodd, 2 Atkins, 328. and several other cases, it was laid down by Lord Hardwicke, that where there is a clause of *nomine pœnæ* in a lease to a tenant, to prevent his breaking up and ploughing old pasture ground, the intention is to give the landlord some compensation for the damage he has sustained, and therefore, in that case, the whole *nomine pœnæ* shall be paid. And in Rolfe *v.* Peterson, 6 Brown, P. C. 460 (2d. Vol. 436. last edit.) the tenant covenanted, that in case any part of the premises, that had not been in tillage within twenty years, should be converted into tillage,

issue a writ to the sheriff of that county where the action shall be brought, to summon a jury to appear before the justices or justice of assize, or *nisi prius*, of that county, to enquire of the truth of every one of those breaches, and to assess the damages that the plaintiff shall have sustained thereby; in which writ it shall be commanded to the said jus-

he would, for the remainder of the term, pay the further yearly rent of 5*l.* for every acre so converted; the tenant having converted into tillage a parcel of land before covered with furze, and an action being brought against him for this, and other breaches of covenant, and 300*l.* damages being recovered upon a judgment by default, Lord Camden directed an issue *quantum damnificatus*, ordering that the damages upon each breach of covenant should be found separately. Upon appeal to the House of Lords, in opposition to the argument, that the damages were increased to so high a sum by means of the covenant to pay the increased rent, which was to be considered as a penalty, and that the court of equity could relieve against it, it was said that this was not a penalty, but a liquidated satisfaction, fixed and agreed upon between the parties, and was reserved as an additional rent; whereas a penalty is a forfeiture for the better enforcing a prohibition, or a security for the doing some collateral Act. On the other side it was said, that these rigorous covenants, though seemingly made for the preservation of estates, are in effect a new mode of raising rents, more oppressive than the proceeding by ejectment, and are not in the nature of a contract, but of a penalty of vindictive damages; and therefore ought to receive no countenance in equity, as the penalty thereby reserved frequently exceeds the value of the inheritance. But the decree was reversed.

A lease for lives was made at the yearly rent of 125*l.* with a clause, that if the tenant and his heirs, with all their family, did not live on the premises during the continuance of the lease, the rent should be raised to 150*l.* An action at law having been commenced upon this clause, the Court of Exchequer in Ireland granted an injunction; upon appeal to the House of Lords it was argued in support of the decree, that the covenant being inserted only for the sake of improvement, and to secure the rent reserved, the same had been substantially performed, and the design thereof answered; for it was admitted, that the lands were kept well stocked with more than sufficient to answer the rent; but the decree was reversed; Ponsonby *v.* Adams, 6 Br. P. C. 407. (last edit. 2 vol. 431.)

In Roy *v.* Duke of Beaufort, 2 Atkins, 190. the plaintiff and his son, while the son was in custody on the information of the duke's gamekeeper for carrying a gun, gave a bond, that the son should not commit any trespass in the duke's royalties, by shooting, hunting, fishing, &c. unless with the licence of the gamekeeper, or in company with a qualified person. The son having caught two flounders with an angling-rod, in company with two servants of the duke, one of whom (a brother-in-law of the gamekeeper) invited him to go angling with them; the bond was put in suit, and a verdict obtained on the evidence of these servants, for the penalty, which, with 40*l.* for costs, the plaintiff (his son being dead) was obliged to pay. Upon a bill filed by him for relief, the following questions were made: 1st., Whether the bond was obtained by oppression and imposition? 2d., Whether it should be only considered as a security that the son should not poach for the future? 3d., Whether an ill use had been made of the bond? Lord Hardwicke, upon the first question, expressed his opinion in favour of the bond, and in the course of it, observed, in answer to an argument that the penalty was excessive, that to be sure the penalty was a large one; but he did not know that courts of equity, where bonds have been entered into voluntarily, have ever gone so far as to take into their consideration the greatness or the smallness of the penalty: he should be extremely cautious how he gave an opinion that would set aside such bonds, which, if rightly used, might be of great service in the preservation of the game, and an equal benefit to the obligors themselves, by taking them out of an idle course of life, which poaching naturally leads them into. As to the head of security, he said, that it was most absurd, to think that bonds of this kind were intended merely as a security, and that nothing was to be recovered upon them. He was of opinion, that when these kinds of bonds were given by way of stated damages between the parties, it was unreasonable to imagine, that they could only be intended as a bare security that the obligor should not offend for the future. "Was this the case, (he said) in what respect is a gentleman, who has taken such a bond, in a better condition than he was before, if, after he has obtained judgment at law, a court of equity will give him no other satisfaction than the bare value of the price of the game that is killed?" Upon the third point, he observed, that from the year 1729, when the bond was given, no evidence was offered of the son poaching until 1732; (*a*) and after killing these flounders, it rests two years, and no ac-

(*a*) Would not such evidence have been irrelevant? Atkins does not state the proceedings at law: but, from the nature of the thing, there must have been a plea, alleging that the son had not trespassed contrary to the condition of the bond, to which the replication must have answered, with stating a particular trespass. To have stated more trespasses than one, would have been bad, as being multifarious, except as to the effect of the statute of William, which had not at that time been applied to such bonds as these, and which is not at all adverted to; and as one only was alleged, one only could be proved. If the son the minute after giving the

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Defendant paying damages, execution may be stayed.

tices or justice of assize, or *nisi prius*, that he or they shall make return thereof to the court from whence the same shall issue, at the time in such writ mentioned; and in case the defendant or defendants after such judgment entered, and before any execution executed, shall pay unto the court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entered upon record; or if by reason of any

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tion is brought; (*a*) afterwards, the plaintiff in equity was a witness against the two servants for a riot, and they were convicted chiefly on his evidence. It is a very material circumstance, that the son had a licence, (*b*) or at least an encouragement, to fish, by being in company with two of the duke's servants (*c*) (one of whom was brother-in-law to the gamekeeper) (*d*). It frequently happens, that there may be a just cause of action, yet the real motives may be very unjust, which a court of equity will always take into their consideration, though they cannot at law pay any regard to it. (*e*) It appears, that the gamekeeper, who had the authority of the duke, who has been a witness to the transaction of the bond, (*f*) gave a licence, or at least an encouragement, (*g*) to this fishing, which, as it was with an angling-rod only, cannot be called poaching, nor was it ever so esteemed. (*h*) In such a tract of time as two years, it is impossible to suppose that the gamekeeper could be ignorant of this fishing, especially as his own brother-in-law was in the company. (*i*)

"According to the condition of this bond, the plaintiff could not be relieved at law, because his son could not fish without express leave from the gamekeeper, or in presence of a qualified person, so that if the Duke of Beaufort himself (*k*) had given leave, there must at law have been a verdict, because it is not within the express terms of the condition of the bond.

"Now when a man has made this moderate use of his liberty (*l*) of fishing, and manifestly appears to have had leave, it would be hard not to relieve against the penalty recovered upon this bond at law."

The third point in the preceding case, though not immediately referable to the course of the present discussion, is inserted to shew the real ground upon which the case was determined; a ground that appears to me to be in every respect untenable, and which I have commented

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bond had shot a partridge before the duke's face, would not this have been a breach against the full intention of the bond? But what distinction can reasonably be made, as a matter of legal inquiry, between one time and another, when there is no distinction by the contract itself?

(*a*) If a right of action once attached, in how short a space of time was it requisite that the action should be brought, so as it was not barred by any statute of limitations?

(*b*) This is quite out of the question.

(*c*) Can a man's legal right be prejudiced by his servant having, without his authority, concurred in the violation of it?

(*d*) What difference does this make?

(*e*) This appears to be a most dangerous doctrine. Where a man has a legal right, the motives which induce him to exercise that right, or to forbear from the exercise of it, must rest with himself. If he forbears the exercise of it, the duration of such forbearance is also a matter of discretion, until the law has allowed it to operate as a bar. If a sentiment of personal disapprobation is a sufficient warrant for a court of equity to defeat the exercise of a legal right, the discretion assumed under this pretence will be so illimitable, as to eradicate all the principles of juridical certainty. If up to and at the time of the plaintiff giving evidence against the servants, (who, by the bye, probably did not, until that time, divulge the circumstance) the duke had a right of action which a court of equity would not controul him in the exercise of, that right could not be defeated by such a circumstance taking place.

(*f*) What then?

(*g*) Gave a licence, that is, did not give a licence, but gave an encouragement; the meaning of which does not appear, except as it may be inferred from what follows, that he probably would; therefore, that he actually did know of the circumstance within two years afterwards.

(*h*) The word poaching does not occur in the condition of the bond; but if he shall *trespass by fishing*, the obligation shall be in force. The Act against stealing fish is held to extend to angling

(*i*) Is there any presumption *juris et de jure*, that a man is cognizant of every act done in the presence of all his brothers-in-law; and to what further degrees of relationship is the principle to be carried?

(*k*) Here another principle would apply to prevent a person taking advantage of a penalty incurred by his own act or consent; but that is a principle totally inapplicable to the present question. The condition might have been made general without including an exception of the consent of the gamekeeper. When a particular exception is introduced, referable to one case, it is not the province of courts of justice to create a more extensive exception not contemplated by the contracting parties.

(*l*) What liberty? What leave? He either had leave from the gamekeeper, or he had not. If he had, it was a defence at law, but the whole case assumes that he had not, and that the bond was legally forfeited.

execution executed, the plaintiff or plaintiffs, or his or their executors or administrators, shall be fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expenses for executing the said execution, the body, lands, or goods of the defendant, shall be thereupon forthwith discharged

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upon in the notes with a freedom which may perhaps be regarded as arrogance, but which I must always assert as the privilege of a writer who wishes to extend his enquiries beyond the mere collection of authorities, and to investigate the principles of his subject. (*a*)

Upon the second point, I conceive the opinion of the eminent magistrate to be founded upon the most correct principles of judicial reason; and I am persuaded that if these principles had been more extensively acted upon than they have been, the true object of penal obligations would have been more effectually promoted. If the penalties had been allowed to operate really *in terrorem*, by being actually levied when legally incurred, agreements would be more faithfully performed, from a terror of the consequences of their infraction; but the scarecrow doctrine of penalties being stipulated, merely *in terrorem*, whilst they are known to have no efficient power, is little more than a trifling with language. No penalty is requisite to render a person liable to the damages which may be proved to have arisen from the non-performance of his agreements, but by a real liability to an actual penalty such non-performance will commonly be prevented.

In the following case a bond was given by the plaintiff to the defendant, who was a hair-merchant, as a security for his service and behaviour in Flanders, as an agent for the defendant in buying hair there; the plaintiff was to stay abroad till a certain season, and as a security for his performance of the agreement he deposited 100*l.* in the hands of the defendant. The plaintiff bought but five pounds' worth of hair for the defendant, and returned to England before the time agreed between them; and brought a bill for 50*l*, agreed to be paid for his trouble, and also for the deposit. It was insisted for the defendant, that this was a breach of the plaintiff's duty, and a forfeiture of the bond, and that the defendant had a right to retain the 100*l.* in satisfaction of the penalty, and that the court would not relieve against it, for it was the stated damages between the parties, and the counsel cited the above case of the Duke of Beaufort, and likewise compared it to the case of *nomine pœnæ* in leases. The Lord Chancellor said, he could not decree this penalty, because it was a bond for services only, and different from the cases of a *nomine pœnæ* in leases, to prevent a tenant from ploughing, because that was stated damages between the parties. Nor was it like the case of bonds given as a security not to defraud the revenue, because there, where a person is guilty of a breach, it was considered as a crime, and the Court of Chancery would not relieve for that reason. Here he could not decree the penalty, but must decree an action at law, upon a *quantum damnificatus*, to try how far the defendant had been damnified by the plaintiff's non-performance of his service; Benson *v.* Gibson, 3 Atk. 395. (*b*)

In the case of Hardy *v.* Martin, 1 Bro. c. 418, n.

(*a*) The general doctrine of preventing an ill use being made of a bond is properly applicable to a subject of a different nature, and is principally instanced in the case of general bonds of resignation, which, when they were allowed to be valid in point of law, were prevented by courts of equity from being made the cover of simony; and, in any other case, a court would prevent a legal contract from being used as the engine of an illegal purpose. That Lord Hardwicke should, from a sentiment of disapprobation of the conduct of the Duke of Beaufort, have resorted to such reasoning as has been stated, would seem a caution against looking in legal proceedings at any other object than the true legal grounds of judicial determination. An objection, which might have deserved some attention in the principal case, *viz.* that the contract was repugnant to a principle of law, inasmuch as it was made by way of composition for dropping a criminal prosecution, was not made a point in the case (except as connected with the adventitious circumstance of oppression.) The decisions in subsequent cases would give considerable weight to such an objection if the question should hereafter arise.

(*b*) There seems to be an inaccuracy in the phrase that the court could not decree the penalty, because that expression would be rather applicable to a suit by the obligee to enforce the penalty, than to one by the obligor to be relieved from it; but this inaccuracy is more probably imputable to the reporter than to the Lord Chancellor; as to the propriety of the decision, though there is not a similarity of circumstances to the cases mentioned, there does not appear to be any necessary opposition of principle; and it is impossible to suppose that the intention of the employer, in requiring the deposit, was any other than that it should be retained in case of the agent's infraction of his duty. In these cases the injury which can be manifested by evidence to a jury, is almost necessarily much less than that which is actually experienced by the party.

When the Courts adopted the principle above cited, that if a penalty is merely inserted to secure the enjoyment of a collateral object, the enjoyment of the object is considered as the principal effect of the deed; if they had gone on to ask themselves how that effect would be most fully obtained, they would have probably found the answer to be, an enforcement of the penalty when that enjoyment was wilfully withheld.

The distinct enunciation of the above principle in the case of Sloman *v.* Walter, induced

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But judgment to remain to answer any further breach, &c.

from the said execution, which shall likewise be entered upon record; but notwithstanding in each case such judgment shall remain, continue, and be, as a further security to answer to the plaintiff or plaintiffs, and his or their executors or administrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing contained, upon which the plaintiff or plaintiffs may have a *scire facias* upon the said judgment against the defendant, or against his heir, terre-tenants, or his executors or

one partner, on retiring from business, gave a bond of 600*l.* to the other, not to carry on the same business within certain limits; and after a verdict at law for the penalty, the Court of Chancery granted an injunction to stay execution, and directed an issue to take an account of the damage actually sustained.

In case of a penalty for non-performance of covenants or agreements, the courts of equity, in like manner, exercised a jurisdiction of restraining the recovery to the amount of damage assessed by a jury. At common law, the rules of pleading, which require issues to be taken upon a single point in general, confined the plaintiff to state a single breach of the agreement, for the performance of which the penalty was stipulated; but this restriction did not exist in cases where the breach of the agreement was stated in the declaration, in which the plaintiff may allege his complaint as extensively as he finds convenient.

By stat. 8 and 9 W. 3. c. 11. it is enacted, that in all actions in any court of record, upon any bond, or any penal sum, for non-performance of any covenants or agreements, contained in any indenture, deed, or writing, the plaintiff may assign as many breaches as he thinks fit, and the jury shall assess damages upon such breaches as the plaintiff shall prove to have been broken; and if judgment shall be given for the plaintiff on *demurrer*, or confession, or by *nil dicit*, the plaintiff may suggest upon the roll as many breaches as he shall think fit, upon which a writ shall issue to the sheriff to summon a jury before the justices of assize, to enquire of the truth of those breaches, and to assess the damages; and upon payment of such damages with the costs, execution shall be stayed; but the judgment shall remain as a security, to answer for any damages to be afterwards sustained by any future breach.

The natural construction of this Act does not seem to apply to bonds, with a condition to do or not to do any given Act, without there being any other distinct agreement, that such Act shall be done: but in Collins *v.* Collins, 2 Bur. 824. above cited, where the condition of a bond was that the defendant should pay an annuity to the plaintiff, and should also maintain him, Lord Mansfield said, "This is an agreement between the parties, and an agreement in writing; the condition of the bond is an agreement in writing, and people have frequently gone into courts of equity upon conditions of bonds as being agreements in writing, to have a specific performance." I cannot help thinking that there is more ingenuity than solidity in this reasoning; for though in equity the condition of a bond is regarded *as evidence of* an agreement, that the Act referred to shall be done, such conditions are not regarded as agreements at law, and cannot be declared upon as such; and where there was another subject to which the words of the statute were naturally applicable, it would have been as well to avoid extending the operation of it to a case, that does not naturally present itself to the mind, as being in the view of the Legislature, and to which the words can only be applied by a forced and foreign construction. It is however settled, in conformity with the above opinion, that the statute extends generally to all bonds for the performance of any condition; Walcot *v.* Goulding, 8 T. R. 124. A bond to the Lord Chancellor, pursuant to stat. 5 Geo. II. c. 30, upon taking out a commission of bankrupt, is not within the Act; Smithey *v.* Edmonson, 3 East, 22.

It is now also settled that the Act is compulsory, and that the plaintiff is not at liberty to proceed for the penalty as at common law, although there have been decisions, and there seems to have been a tacit practice the other way. (*a*) Drage *v.* Brand, 2 Wils. 377, Goodwin *v.* Crewle, Cowp. 357. Hardy *v.* Bern, 5 T. R. 636. In the last case, Lord Kenyon, and Mr. Justice Buller, certified their opinion in writing to the Lord Chancellor, upon a writ of error from a judgment of the Exchequer; they stated that it was apparent to them, that the law was made in favour of defendants, and was highly remedial, calculated to give plaintiffs relief up to the extent of the damage sustained, and to protect defendants against the payment of further sums than what was in conscience due, and also to take away the necessity of proceedings in equity, to obtain relief against an unconscientious demand of the whole penalty, in cases where small damages only had accrued. (*b*) See also Roles *v.* Rosewell, 5 T. R. 540.

me to mention that case before the others upon the same subject, which are anterior to it in point of time.

(*a*) See Bird *v.* Randall, post.

(*b*) The Act is penned in a most careless manner: but I think that this is evidently the true costruction of it upon the point in question, and that the Act is compulsory upon the plaintiff as to assigning some breach, but was discretionary merely as to the number of breaches. In any other point of view there would be a manifest absurdity, in providing that the plaintiff might assign as many breaches as he pleased, upon judgment on *demurrer*, &c. and damages

administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively to shew cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as was in the action

But there are cases where the penalty stipulated by the parties can be the only true and proper measure of justice; and though there is a technical distinction between a penalty and stated damages, to which I am about to proceed, I think it would be in general proper to regard the penalty as stated damages, unless there is some particular reason in the nature of the contract to the contrary. Many times engagements are entered into upon considerations, wholly arising out of the personal feelings of the parties. The person making such engagement of course acts under an adequate inducement, and the person who has given that inducement ought not to be deprived of the full security of an object, the personal importance of which can only be justly appreciated by himself. On the other hand where a bond is evidently a mere bond of indemnity from pecuniary loss, the extent of the loss is the extent of the damages. In many cases, the actual damage which could be brought under the contemplation of a jury must be as nothing; and if the nominal sum awarded in such cases, was the only consequence that could attach upon a person violating his engagement, the sanction provided with a view to its real and efficient security would be wholly frustrated. I shall have an opportunity presently of referring more conveniently to a case in which this sentiment was judicially adopted.

In all the cases above mentioned, where it was held that equity could not relieve against the sum agreed upon by the parties, I conceive it may be taken for granted, that the sum stipulated to be paid is the only proper measure for the decision of the jury; and whether the form of the transaction is held to be a penalty or stipulated damages (the line of discrimination between which is not very accurately marked,) the sum so agreed is the amount which ought to be recovered.

In the case of Lowe *v.* Peers, 4 Burr. 2225, the defendant promised the plaintiff that he would not marry any person besides herself, and that if he did, would pay her (the plaintiff) 1000*l.* (*a*) at the end of three months. Lord Mansfield, after stating the proceedings in the cause, said, that the jury had given 1000*l.* damages; and by law and in justice, the defendant ought to pay the 1000*l.* Money is the measure of value. Therefore what else could the jury find but this 1000*l.*, (unless they had also given interest after the three months.) This is not an action brought against him for not marrying her, or for his marrying any one else; the non-payment of the 1000*l.* is the ground of the action. The money was payable on a contingency, and the contingency has happened, therefore it ought to be paid. There is a difference between covenants in general, and covenants secured by a penalty or forfeiture. In the latter case the obligee has his election. He may either bring an action of debt for the penalty, and recover the penalty, after which recovery of the penalty he cannot resort to the covenant, because the penalty is to be a satisfaction for the whole; or if he does not choose to go for the penalty, he may proceed upon the penalty, and recover more or less than the penalty *toties quoties*. And upon this distinction they proceed in courts of equity. They will relieve against a penalty upon a compensation; but where the covenant is to pay a particular liquidated sum, a court of equity cannot make a new covenant for a man; nor is there any room for compensation or relief, as in leases containing a covenant against ploughing up a meadow: if the covenant be not to plough, and there be a penalty, a court of equity will relieve against the penalty, *or will even go further than that* to preserve the substance of the agreement; but if it is worded, to pay 5*l.* an acre, for every one ploughed up, there is no alternative, no relief against it, no room for compensation; it is the substance of the agreement. Here the specified sum of 1000*l.* is found in damages (*b*); it is the particular liquidated sum fixed and agreed upon between the parties, and is therefore the proper quantum of the damages. It is clear that where the precise sum is not the essence of the agreement, the quantum of the damages may be assessed by the jury; but where the precise sum is fixed and agreed upon between the parties, that very sum is the ascertained damage, and the jury are confined to it.—And the other judges gave their opinions to the same effect.

Where persons contracting for the iron work of a building, agreed to perform it in six weeks, and to pay 10*l.* a week afterwards until it was done, and gave a bond in a penalty for the performance, it was held that the 10*l.* a week was in the nature of liquidated damages; and it was said by Mr. Justice Ashhurst, that the object of

should be assessed, &c.; for before that time he might take his judgment and execution for the whole penalty, without assigning any breach at all; and giving him an option to assign a breach to enable him to recover a part of the penalty, instead of taking the whole without having recourse to that proceeding, would not be productive of any extensive practical consequence.

(*a*) The promise was held to be void, but the amount which ought to be recovered, supposing it to be good, was previously discussed, which perhaps was necessary in regard to the question of costs.

(*b*) His lordship at the trial directed the jury to find for the plaintiff with 1000*l.* damages, *if they thought the deed a good one.* This last, by the bye, was rather an odd point to leave to a jury.

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of debt upon the said bond or obligation, for assessing of damages upon trial of issues joined upon such breaches, or inquiry thereof upon a writ to be awarded in manner as aforesaid; and that upon payment or satisfaction in manner as aforesaid, of such future da-

the parties in naming this sum, was to prevent any altercation concerning the quantum of damages, which might have been sustained by the non-performance of the contract. It would have been difficult for a jury to have ascertained what damages had really been suffered by the breach of the agreement; so that it was a case of stipulated damages, and was not to be considered as a penalty. Mr. Justice Buller said, that when there is a penalty in the bond, it was strange that the sum mentioned in the condition should be called a penalty; he did not know that there could be an equitable and a legal penalty; but that was as strongly a case of liquidated damages as could possibly exist, and was like the case of demurrage. In either case it is impossible to ascertain what the damages are, and the parties agree to pay a stipulated sum. Fletcher *v.* Dyke, 2 T. R. 32.

In Astley *v.* Weldon, 2 Bos. 346. the defendant engaged to perform at the plaintiff's theatre for a certain time, and to attend performances and rehearsals, or subject herself to the fines established at the theatre. There were also several agreements on the part of the plaintiff. "And it was agreed between the parties, that either of them neglecting to perform the agreement should pay to the other 200*l.*" The plaintiff brought an action against the defendant, for refusing to perform, and for wholly withdrawing from the theatre; and the declaration concluded with stating that by reason thereof she became liable to pay the sum of 200*l.* in the articles mentioned. It being proved that the agreement was broke by the defendant absenting herself, and evidence having been given that by the regulations of the theatre, the performers were subject to certain small fines for inebriety, late attendance, &c. a verdict was found for the plaintiff with 20*l.* damages, with liberty for the plaintiff to enter a verdict for 200*l.* damages, if the court should be of opinion that the sum mentioned in the agreement, was to be considered in the nature of liquidated damages. After argument, it was held that the question of damages was properly left to the jury. Lord Eldon said, that when the cause came before him at *nisi prius*, he felt, as he had often done before in considering the various cases on this head, much embarrassed in ascertaining the principle upon which those cases were founded; but it appeared to him that the articles in this case furnished a more satisfactory ground for determining whether the sum of money therein mentioned ought to be considered in the nature of a penalty or of liquidated damages, than most others which he had met with; what was urged in the course of the argument had ever appeared to him to be the clearest principle, *viz.* that where a doubt is stated whether the sum inserted be intended as a penalty or not, if a certain damage less than that sum is made payable upon the face of the same instrument, in case the Act intended to be prohibited be done, that sum shall be construed a penalty. The case of Sloman *v.* Walter, did not stand in need of this principle; for there, by the very form of the instrument, the sum appeared to be a penalty, in which case a court of equity could never consider it as liquidated damages, but must direct an issue of *quantum damnificatus.* A principle has been said to have been stated in several cases, the adoption of which one cannot but lament, namely, that if the sum would be very enormous and excessive, considered as liquidated damages, it shall be taken to be a penalty, though agreed to be paid in the form of contract. This has been said to have been stated in Rolfe *v.* Peterson, where the tenant was restrained from stubbing up timber. But nothing can be more obvious than that a person may set an extraordinary value upon a particular piece of land or wood, on account of the amusement which it may afford him. In this country a man has a right to secure to himself a property in his amusements, and if he choose to stipulate for 5*l.* or 50*l.* additional rent upon every acre of furze broken up, or for any given sum of money upon every load of wood cut and stubbed up, he saw nothing irrational in such a contract; and it appeared to him extremely difficult to apply with propriety the word "excessive," to the terms in which parties choose to contract with each other. His Lordship made some observations upon the preceding cases on this subject, and said that with respect to Hardy *v.* Martin, he did not understand why one tradesman, who purchases the good will of a shop from another, may not make it a matter of agreement, that if the vendor trade in the same article within a certain distance, he shall pay 600*l.*, and why the party violating such agreement should not be bound to pay the sum agreed for; though if such agreement were entered into in the form of a bond, with a penalty, it might perhaps make a difference. (*a*) In his observations upon the par-

(*a*) If such was admitted to be the real intention of the parties, there can be no foundation for a court of equity, whose peculiar province is to preserve and maintain the substance of transactions, to subvert both form and substance, in a manner which renders the transaction itself wholly nugatory. The damage which can be actually proved in such case as this must in general be nothing, because it is very difficult to shew that the profit received by the one, would in particular cases have otherwise fallen to the other; but the real injury sustained by continuing the trade in violation of the agreement, may at the same time incalculably exceed the stipulated penalty.

mages, costs, and charges, as aforesaid, all further proceedings on the said judgment are again to be stayed, and so *toties quoties*, and the defendant, his body, lands, or goods, shall be discharged out of execution, as aforesaid. (1)

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ticular case, his lordship referred to the pecuniary payments agreed to be made by the plaintiff, and also to the small fines, which, according to the regulations of the theatre, were to be paid by the defendant; inferring that in these cases the sum of 200*l.* was only to be regarded as a security for the stipulated payments; and that there was not any ground for distinguishing between these and the other parts of the agreement. Mr. Justice Heath, in the course of his opinion, said; it was very difficult to lay down any general principle in cases of this kind, but he thought there was one which might safely be stated; that where articles contain covenants for the performance of several things, and then one large sum is stated at the end to be paid upon breach of performance, that must be considered as a penalty; but where it is agreed that if a party do such a particular thing, such a sum shall be paid by him, there the sum stated is treated as liquidated damages. Mr. Justice Chambre said, that though in point of form the action was for damages, yet if the parties are to be considered as having stipulated for certain damages, the jury ought to be directed to find damages, to the amount of the whole sum so agreed for, and the effect of the case must have been the same, as if the plaintiff had declared in debt for a penal sum. After taking notice of some of the decisions above cited, he said, there is one case in which the sum agreed for must always be considered as a penalty, and that is, where the payment of a smaller sum is secured by a larger; in this case, it is impossible to garble the covenants, and to hold that in one case the plaintiff shall only recover for the damages actually sustained; and in another, that he shall recover the penalty; the concluding clause applies equally to all the covenants. With respect to the case of Hardy *v.* Martin, in which he was concerned, Lord Mansfield, upon the trial at law, inclined to think it a case of stipulated damages, though it appeared by the printed report, that it was considered otherwise in a court of equity. (*a*)

In Legh *v.* Lewis, a bond was given by the defendant to the plaintiff in 400*l.*, to resign the situation of master of a school at Knutsford, upon the plaintiff's request; the validity of this bond was established upon demurrer, by the Court of King's Bench, 1 East 391. The case afterwards came on at Chester Assizes for an inquiry of damages: on the one hand, it was contended that as the plaintiff had not any personal interest, the damages should be merely nominal; on the other hand, that they ought to be given for the entire penalty. Mr. Mansfield, and Mr. Burton, the justices of Chester, supported this latter opinion in a very elaborate discussion of the subject, and the damages were found accordingly; the judges considering that it was the intention of the parties, that an actual liability to the penalty should operate as a sanction, for the performance of the primary obligation to resign. (*b*)

From the above series of cases which I have cited, at much greater length than is consistent with my general plan, it is obviously no easy matter to determine, in what cases the sanction, intended by the parties to enforce the performance of their engagements, shall or shall not be permitted to take effect. But in framing an instrument for this purpose, I think the best way will be to express the condition or engagement, in terms declaring "that the party shall do, or not do the Act intended, or in default thereof shall pay the sum of ——— *as and for stipulated damages, for the same;*" and also to insert as a penalty, a larger sum than that agreed to be payable as stipulated damages: and in case it is intended that the party making default shall be liable to pay a certain stipulated sum, but that the other shall not lose his right to general damages, to add, "and such further damages as the said ——— shall in that behalf sustain;" or otherwise to add a proviso, "that the damages above stipulated shall not prejudice the right of the said ——— to sue for any other or greater damages, for and on account of the non-performance of the agreement."

(1) As to the mode of proceeding in assigning breaches, see Williams's Notes to 1 Saund. 58. 2 Saund. 157; Plomer *v.* Ross, 1 Marshall 95; Johnes *v.* Johnes, 2 Dow P. C. 1; Kinnersley *v.* Mussen, 5 Taunt. 264.

(*a*) This case would regularly come before Lord Mansfield a second time, upon the issue directed by the Court of Chancery, and perhaps it was upon that occasion that he expressed the opinion alluded to: for a direction to the jury that they had no other guide, than the penalty in the bond would certainly be more proper and judicious than any other.

(*b*) I regret that I am not able to furnish a more full account of a judgment from the good sense and learning of which I received peculiar gratification, at the time of its being pronounced, than the following very short note by Mr. Wigley, (who was a counsel in the cause) of the opinion of Mr. Mansfield. "Here the defendant is to resign; this is the object of the bond to compel a resignation. What else but the penalty can possibly be the measure of damages? If this is not the measure of damages, the bond is a farce. The plaintiff, to be sure, might make the defendant pay costs: but my opinion is, that if he is entitled to recover any thing, it is the whole?"

No. XXII. 8 & 9 W. III. c. 27.

## [ No. XXII. ] 8 & 9 William III. c. 27.—An Act for the more effectual Relief of Creditors in Cases of Escapes, and for preventing Abuses in Prisons and pretended privileged Places.

Prisoner in execution escaping, may be retaken by any new capias.

VII. AND be it further enacted and declared by the authority aforesaid, That if at any time after the said first day of *May*, any prisoner who is or shall be committed in execution to either or any of the said respective prisons, shall escape from thence by any ways or means howsoever, the creditor or creditors, at whose suit such prisoner was charged in execution at the time of his escape, shall or may retake such prisoner by any new *capias*, or *capias ad satisfaciendum*, or sue forth any other kind of execution on the judgment, as if the body of such prisoner had never been taken in execution.

Keeper refusing to shew prisoner, it shall be an escape.

VIII. And be it further enacted by the authority aforesaid, That if the said marshal or warden for the time being, or their respective deputy or deputies, or other keeper or keepers of any other prison or prisons, shall, after one day's notice in writing given for that purpose, refuse to shew any prisoner committed in execution to the creditor at whose suit such prisoner was committed or charged, or to his attorney, every such refusal shall be adjudged to be an escape in law.

[*See the Act at length, ante, Class III. No.* 17].

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## [ No. XXIII. ] 8 Anne, c. 14.—An Act for the better Security of Rents, and to prevent Frauds committed by Tenants.

[At length, *infra*.]

8 Anne, c. 14.

If any lessee, &c. shall fraudulently carry off goods, &c. the lessor, &c. may within five days after seize such goods, &c. and sell the same as if they had been distrained.

II. AND be it further enacted by the authority aforesaid, That in case any lessee for life or lives, term of years, at will or otherwise, of any messuages, lands, or tenements, upon the demise whereof any rents are or shall be reserved, or made payable, shall, from and after the said first day of *May*, fraudulently or clandestinely convey or carry off or from such demised premises, his goods or chattels, with intent to prevent the landlord or lessor, from distraining the same for arrears of such rent so reserved as aforesaid, it shall and may be lawful to and for such lessor or landlord, or any person or persons by him for that purpose lawfully impowered within the space of five days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found as a distress for the said arrears of such rent; and the same to sell or otherwise dispose of, in such manner, as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such demised premises for such arrears of rent, any law, custom, or usage to the contrary in any wise notwithstanding.

[*See the Act at length, post Title* Distress, Replevin, &c.]

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## [ No. XXIV. ] 3 George I. c. 15.—An Act for the better regulating the Office of Sheriffs, and for ascertaining their Fees, and the Fees for suing out their Patents, and passing their Accounts.

3 G. I. c. 15.

Sheriffs levying debts, &c. (except post fines).

III. AND be it enacted by the authority aforesaid, That from and after the ninth day of *July* in the year of our Lord One thousand seven hundred and seventeen, all sheriffs who shall levy any debts, duties, or sums of money whatsoever, except post fines, due or hereafter to become due to the King's Majesty, his heirs or successors, by process to them directed upon the summons of the pipe or green wax, or by *levari facias*, out of the Court of Exchequer, shall from

No. XXIV. 3 George I. c. 15.

time to time, for their care, pains and charges, and for their encouragement therein, have an allowance upon their accounts of twelve-pence out of every twenty shillings for any sum not exceeding one hundred pounds so by them levied or collected; and the sum of sixpence only for every twenty shillings over and above the first one hundred pounds; and for all debts, duties and sums of money, except post fines due or to become due to his Majesty, his heirs and successors, by process on *fieri facias* and *extent* issuing out of any of the offices of the Court of Exchequer, the sum of one shilling and sixpence out of every twenty shillings, for any sum not exceeding one hundred pounds so by them levied or collected; and the sum of twelve pence only for every twenty shillings over and above the first one hundred pounds: Provided always, such sheriff shall duly answer the same upon his account by the general sealing day of such term in which he ought to be dismissed the court, or in such time to which he shall have a day granted to finish his said accounts, by warrant signed by the Lord Chief Baron, or one of the barons of the coif of the said court for the time being, and not otherwise.

to have 1*s.* per pound for the first 100*l.* and 6*d.* for every 20*s.* above that sum; and on process by *fi. fa.* and extent, to have 1*s.* 6*d.* per 1*l.* for the first 100*l.* and 1*s.* per 1*l.* above.

Provided he answer the same on his account.

XVI. And for ascertaining the fees for executing of writs of *elegit*, so far as the same relate to the extending of real estates, and for ascertaining the fees for executing of writs of *habere facias possessionem* aut *seisinam*; Be it enacted by the authority aforesaid, That from and after the last day of *Michaelmas* term in the year of our Lord One thousand seven hundred and seventeen, it shall not be lawful for any sheriff, under-sheriff, deputy-sheriff, or their bailiffs, or for the bailiff of any franchise or liberty, or any of them, by reason or colour of their office or offices, or by reason or colour of their executing of any writ or writs of *habere facias possessionem* aut *seisinam*, to demand, ask, or receive any other or greater consideration, fee, gratuity, or reward, than is hereafter mentioned, (which shall be lawful to be demanded and taken) that is to say, the sum of twelvepence for every twenty shillings of the yearly value of any manor, messuage, lands, tenements, and hereditaments, whereof possession or seisin shall be by them or any of them given, where the whole exceedeth not the yearly value of one hundred pounds, and the sum of sixpence only for every twenty shillings *per annum* over and above the said yearly value of one hundred pounds.

No sheriff, &c. shall take above 1*s.* per 1*l.* of the yearly value of any manor, &c. where the whole exceeds not 100*l.* *per annum*,

and 6*d.* only for every 20*s.* above the said yearly value.

By 8 Geo. I. c. 25. s. 5. no more is to be taken on an extent and liberate.

'XVII. And whereas it often happens that small sums only are remaining due upon judgments, statutes and recognizances given, acknowledged and entered into for great sums and penalties, and nevertheless in these cases upon executing of writs of *capias ad satisfaciendum*, the sheriff demands and takes for his fees poundage for the whole money for which such judgments, statutes, or recognizances, are entered or acknowledged; which poundage often far exceeds the debts due to the plaintiffs in such writs:' For remedying of which grievance and inconvenience, Be it enacted by the authority aforesaid, That from and after the said last day of *Michaelmas* term, One thousand seven hundred and seventeen, poundage shall in no case be demanded or taken upon executing of any writ of *capias ad satisfaciendum*, or upon charging any person in execution by virtue of such writ, for any greater sum than the real debt *bona fide* due and claimed by the plaintiff amounteth unto; which sum the plaintiff shall be and is hereby obliged to mark and specify on the back of such writ, before the same be delivered to the sheriff to be executed; and in case any sheriff, under-sheriff, deputy-sheriff, bailiff or other person shall offend against the true meaning hereof, by taking any greater fees, gratuity or reward, than is hereinbefore allowed, every such person so offending as aforesaid, and being thereof lawfully convicted, shall be adjudged, deemed and taken, and is hereby adjudged, deemed and taken to be guilty of extortion, injustice and oppression; and all and every such person and persons being thereof lawfully convicted as aforesaid, shall for every such offence forfeit to the party aggrieved treble damages, and

Poundage shall not be taken for executing any ca. sa. &c. (of which part is paid) for any greater sum than what remains due to the plaintiff, who is to mark the same on the back of the writ.

And any sheriff, &c. offending, is guilty of extortion, &c. and shall forfeit to the party grieved the treble damages,

No. XXIV. 3 George I. c. 15.

and double the sum so extorted; and also 200*l.*

double the sum so extorted; which said damages and penalties shall be ordered, decreed and given to the said aggrieved party, by the Court out of which such writ or writs issued, upon complaint and proof of such extortion made and exhibited before the judges of such court, in such short and summary way and method as to them shall seem meet; and over and above the said damages and penalties, every such person so offending and convicted as aforesaid shall forfeit the sum of two hundred pounds; one moiety whereof shall be to the King's Majesty, his heirs and successors, and the other moiety thereof to such person or persons as shall sue for the same; to be recovered by action of debt, bill, plaint, or information in any of the courts of record at *Westminster*, in which no essoign, protection or wager of law shall be allowed, nor any more than one imparlance: Provided such suit be commenced within two years after such offence committed, and not otherwise; and provided likewise, That no person be sued or prosecuted by virtue of this Act for any offence of this kind committed before the said last day of *Michaelmas* term One thousand seven hundred and seventeen.

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[ No. XXV. ] 5 George I. c. 13.—An Act for the Amendment of Writs of Error; and for the further preventing the arresting or reversing of Judgments after Verdict.

[Inserted Class VI. No. 18.]

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[ No. XXVI. ] 8 George I. c. 25.—An Act for supplying some defects in the Statute of the twenty-third of King *Henry* the Eighth, intituled, "An Act for Obligations to be taken by two Chief Justices, the Mayor of the Staple, and the Recorder of *London*," and for setting down the Time of signing Judgments in the Principality of *Wales*, and Counties Palatine.

8 Geo. I. c. 25.
23 Henry 8. c. 6.

'I. WHEREAS recognizances in the nature of a statute staple, which are, by the statute of the twenty-third of King *Henry* the Eighth, appointed to be taken by the two Chief Justices, the mayor of the staple, and the recorder of *London*, are common and beneficial securities; but in regard the same are liable to damage and loss that may happen by fire, and otherwise, and by reason of difficulties arising by defects in the said statute, great inconveniences do accrue to his Majesty's subjects:' For remedy thereof, and for making the said security more effectual, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fifth day of *March*, which shall be in the year of our Lord One thousand seven hundred and twenty-two, the rolls appointed by the said recited statute to be made of such recognizances, shall be varied and made in manner following; (that is to say) the clerk of the said recognizances for the time being, or his deputy, shall yearly from thenceforth prepare and keep three parchment rolls as usual, and shall at the times of acknowledging of every such recognizance, fairly write or ingross, instead of the heads or contents thereof, on the said rolls, the full tenor, *in hæc verba*, of every such recognizance; and that one of the said rolls shall contain all the recognizances to be taken before the Chief Justice of the King's Bench for the time being; and one other of them shall contain all the recognizances to be taken before the Chief Justice of the Court of Common Pleas for the time being; and the other of them shall contain all the recognizances before the mayor of the staple at *Westminster* and recorder of *London* for

In what manner the rolls appointed by 23 H. 8. c. 6. to be made of recognizances in the nature of a statute-staple, shall be varied.

No. XXVI. 8 Geo. 1. c. 25.

the time being; and that at the time of every such acknowledgment, the respective persons before whom such recognizances shall be taken, and also the party and parties acknowledging the same, shall also sign their respective names to the roll or inrolment of every recognizance so taken under the inrolment thereof, as well as sign and seal the same recognizance; and that all the said three rolls so signed shall at the end of every year be fixed together, and be thereby made one roll, as accustomed, and be and remain in the custody of the clerk of the recognizances, or his deputy, in his public office in *London* or *Middlesex*, who shall keep a docket to refer to the said roll or rolls, for the benefit of searches by purchasers and others (as used to be) to which docket also shall be added the day, month, and year of every such acknowledgment.

Clerk of the recognizances to keep a docquet for searchers.

II. And be it further enacted by the authority aforesaid, That in case any loss or damage shall happen to any such recognizance, the same shall and may, from any of the said rolls, so to be kept in the custody of the said clerk, or his deputy, in order to have process thereon, be by him or them, by certificate under his or their seal, certified into Chancery in like manner as recognizances by the said recited Act are directed, and as if the said recognizance had not been lost or damaged; and that to such certificate, and all other certificates of such recognizances, shall be annexed a true transcript of the entry of such recognizance to be taken from the said roll or rolls in his or their custody; and further, that in case of any such loss or damage, a like certificate, with such transcript annexed as aforesaid, shall be made, and be left and remain with the Clerk of the Petty-Bag-Office in Chancery, and shall be as good and effectual as if the said recognizance under seal had been left in the same office, as hath been used upon the issuing out of process in the same office; and that in order to prove such statutes and recognizances, in case of any loss or damage, a true copy or copies from the said roll or rolls, in the custody of the said clerk, or his deputy, made and signed by the said clerk or his deputy, and duly proved, shall be deemed good evidence of such recognizances, and be of the same validity, to all intents and purposes, as if the said original recognizances were produced under seal.

Any loss happening to such recognizance, shall be certified into Chancery.

A transcript of the entry to be annexed to such certificate; and in case of loss, a copy shall be good evidence.

'III. And whereas by the said statute of the twenty-third of King 'Henry the Eighth, there was due to his Majesty a fee of one half-'penny in the pound (according to the value or sum entered into and 'contained in every such recognizance) to be paid on sealing the first 'process on every such recognizance, as in the said Act is appointed, 'which is very heavy on every prosecutor on every such recognizance, 'by reason such sum so entered into is sometimes only intended as a 'penalty for the payment of a lesser sum, or for securing damages for 'the non-performance of covenants, or otherwise; And whereas the 'fees and charges taken or demanded by sheriffs in getting an extent or 'execution, and *liberate* and possession or seisin, executed on every 'such recognizance, are very expensive, in regard the same are not set-'tled:' For remedy in all and every the said cases, Be it further enacted by the authority aforesaid, That the prosecutor of every such recognizance shall, at the time of suing out the first process, or a writ of extent thereon, deliver in to the officer (who shall make out such process or extent) a note in writing under his hand, testifying the sum or value of the damages thereby intended to be extended or levied thereon, which sum or value the said officer shall insert in the said writ to be only extended or levied thereon, and no more; and that the said poundage of one halfpenny, payable on all process as aforesaid, shall be taken and paid only for every pound, according to the said sum or value so inserted, and intended to be extended or levied as aforesaid, and not otherwise.

The prosecutor shall deliver into the office a note testifying the sum intended to be extended.

One halfpenny per pound only to be taken as poundage.

IV. Provided always, and it is hereby further enacted by the authority aforesaid, That in case it shall, at any time or times before or after the filing or returning of any *liberate* or *liberates* sued out on any such extent or extents, be made appear to the Court of Chancery, that suffi-

In what cases the chancery may award re-extents.

No. XXVI. 8 Geo. I. c. 25.

cient has not been extended or levied, or sufficiently extended and levied, to satisfy such recognizance, or that any omission, error or mistake, has happened in making, suing out, executing or returning any of the said writs, or any process thereupon; or should it happen that any lands, tenements or hereditaments, shall hereafter be evicted from any person or persons, who shall have extended the same by virtue of any such writ or process as aforesaid; that then and in every such case the said Court of Chancery shall and may award one or more re-extent or re-extents for the satisfying the same as aforesaid, and that writs of *liberate* or *liberates* may be sued out thereupon; any law or statute to the contrary thereof in anywise notwithstanding.

No sheriff shall take more fees than are appointed by the Act 3 Geo. I. c. 15. sec. 16.

V. And be it further enacted by the authority aforesaid, That no sheriff of any county shall take for the extent and *liberate*, and *habere facias possessionem* or *seisinam*, on the real estate, and levy on the personal estate, by virtue of such extent, any more than the same fees as are appointed by an Act made in the third year of his present Majesty's reign, intituled, "An Act for the better regulating the Office of Sheriffs, and for ascertaining their Fees, and the fees for suing out their Patents and passing their Accounts," for executing a writ of *elegit* and *habere facias possessionem* or *seisinam*, under the like penalties and forfeitures, and to be in like manner recovered against every sheriff or person therein offending, as the same are mentioned and appointed in and by the same Act.

[The remainder of this *infra*.]

## [ No. XXVII. ] 32 George II. c. 28.—An Act for the Relief of Debtors with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of and deliver upon Oath, their Estates for their Creditors' Benefit.

[Inserted Class III. No. 29.]

## [ No. XXVIII. ] 7 George III. c. 29.—An Act for explaining an Act made in the twenty-ninth Year of the Reign of Queen *Elizabeth*, to prevent Extortion in Sheriffs, Under-Sheriffs, and Bailiffs of Franchises or Liberties, in Cases of Execution.

7 George III. c. 29.
29 Eliz. c. 4.

'WHEREAS by an Act made in the twenty-ninth year of the reign of Queen *Elizabeth*, intituled, "An Act to prevent extortion in sheriffs, under-sheriffs, and bailiffs of franchises or liberties, in cases of execution," it is, amongst other things, enacted, That it shall not be lawful to or for any sheriff, under-sheriff, bailiff of franchises or liberties, nor for any of their officers, ministers, servants, bailiffs, or deputies, nor for any of them, by reason or colour of their or either of their office or offices, to have, receive, or take, of any person or persons whatsoever, directly or indirectly, for the serving and executing of any extent or execution upon the body, lands, goods, or chattels, of any person or persons whatsoever, more or other consideration or recompence than in this present Act is and shall be limited and appointed, which shall be lawful to be had, received, and taken; that is to say, twelvepence of and for every twenty shillings, where the sum exceeded not one hundred pounds; and sixpence of and for every twenty shillings, being over and above the said sum of one hundred pounds, that he or they shall so levy or extend, and deliver in execution, or take the body in execution for, by virtue and by force of any such extent or execution whatsoever: And whereas, as the law now stands,

No. XXVIII. 7 Geo. III. c. 29.

'sheriffs are, by virtue of the said recited Act, intitled to the poundage 'therein mentioned, for taking the body of any person in execution, 'upon judgments obtained upon bail bonds, entered into for the appear-'ance of persons prosecuted for offences against the laws relating to his 'Majesty's revenues of customs or excise, such bail bonds being prose-'cuted in the name and at the suit of the sheriffs to whom such bail 'bonds are given, though the sheriffs prosecuting such bonds are 'merely trustees in the suits, for the benefit of the Crown, and the 'sheriffs executing such process, would not in those cases be intitled to 'any poundage, if the proceedings were carried on in the name of the 'Crown; by means whereof the intent of the laws relating to the reve-'nues of the customs and excise will in such cases be so far defeated:' To remedy which inconvenience for the future, May it please your Majesty, that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said recited Act shall not extend, or be construed to extend, to allow any sheriff, under-sheriff, or other person whatsoever employed in the execution of process, any poundage, for taking the body of any person in execution upon any process at the suit of any sheriff, or other officer or minister of the Crown, upon any bail bond entered into for the appearance of any person prosecuted, either for any duties due or payable to his Majesty, his heirs or successors, or for any penalty inflicted by any Act of Parliament made or to be made for the preventing the clandestine running or receiving any customable or prohibited goods; or in any case whatsoever where the sheriff or officer executing such process would not be intitled to poundage, if the proceedings were or had been carried on directly in the name of the Crown; any thing in the said recited Act, or any other Act, to the contrary notwithstanding.

Cases not intitled to poundage, &c.

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[ No. XXIX. ] 33 George III. c. 5.—An Act for the further Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver, upon Oath, their Estates for their Creditors' Benefit.

[Inserted Class II. No. 32.]

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[ No. XXX. ] 37 George III. c. 85.—An Act to amend so much of an Act, made in the thirty-second Year of the Reign of King *George* the Second, intituled, "An Act for the Relief of Debtors, with respect to the Imprisonment of their Persons; and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their Estates, for their Creditors' Benefit," as relates to the weekly Sums thereby directed to be paid to Prisoners in Execution for Debt, in the Cases therein mentioned.—[*19th June*, 1797.]

[Inserted Class II. No. 33.]

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[ No. XXXI. ] 43 George III. c. 46.—An Act for the more effectual Prevention of frivolous and vexatious

No. XXXI. 43 Geo. III. c. 46.

Arrests and Suits; and to authorize the levying of Poundage upon Executions in certain Cases.—[*27th May* 1803.]

[Inserted Class III. No. 36.]

[ No. XXXII. ] 48 George III. c. 123.—An Act for the Discharge of Debtors in Execution for small Debts, from Imprisonment in certain Cases.—[30th *June* 1808.]

[Inserted Class III. No. 38.]

[ No. XXXIII. ] 56 George III. c. 50.—An Act to regulate the Sale of Farming Stock taken in Execution.—[20th *June* 1816.]

56 George III. c. 50.

WHEREAS it is expedient that the execution of legal process should be so regulated, as to be consistent with good husbandry, and the effect and intent of covenants and agreements entered into between the owners and occupiers of land let to farm; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, no sheriff or other officer in *England* or *Wales*, shall, by virtue of any process of any court of law, carry off or sell, or dispose of for the purpose of being carried off, from any lands let to farm, any straw threshed or unthreshed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or seaweed, in any case whatsoever, nor any hay, grass or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables, being produce of such lands, in any case where, according to any covenant or written agreement, entered into and made for the benefit of the owner or landlord of any farm, such hay, grass or grasses, tares and vetches, roots or vegetables, ought not to be taken off or withholden from such lands, or which, by the tenor or effect of such covenants or agreements, ought to be used or expended thereon, and of which covenants or agreements, such sheriff or other officer shall have received a written notice before he shall have proceeded to sale.

No sheriff or other officer shall sell or carry off from any lands any straw, chaff, or turnips, in any case, nor any hay or other produce contrary to the covenant.

II. And be it further enacted, That the tenant or occupier of any lands let to farm, against whose goods any process of law shall issue, whereby such goods may be taken and sold, shall, on having knowledge of such process, give a written notice to the sheriff or other officer executing the same, of such covenants or agreements whereof he or she shall have knowledge, and which may relate to and regulate, or are intended to regulate the use and expenditure of the crops or produce grown or growing thereon, and also of the name and residence of the owner or landlord of such lands; and such sheriff or other officer shall forthwith, on executing such process, and before any sale shall have been proceeded in, send a notice by the general post to the owner or landlord of such lands, in all cases where such owner or landlord shall be resident in any part of this United Kingdom, and shall have been made known to and ascertained by such sheriff or other officer, and also to the known steward or agent of such landlord or owner, in respect of such lands, stating to such owner, landlord and agent, the fact of possession having been taken of any crops or produce hereinbefore mentioned; and such sheriff or other officer shall, in all cases of the absence or silence of such landlord or owner, or his or her agent, postpone and delay the sale of such crops or produce until the latest day he lawfully can or may appoint for such sale.

Tenant to give notice of the existence of covenants;

and sheriff to give notice to the owner or landlord.

No. XXXIII. 56 Geo. III. c. 50.

III. Provided always, and be it further enacted, That such sheriff or other officer executing such process, may dispose of any crops or produce hereinbefore mentioned, to any person or persons, who shall agree in writing with such sheriff or other officer in cases where no covenant or written agreement shall be shewn, to use and expend the same on such lands, in such manner as shall accord with the custom of the country; and in cases where any covenant or written agreement shall be shewn, then according to such covenant or written agreement; and after such sale or disposal so qualified, it shall be lawful for such person or persons to use all such necessary barns, stables, buildings, outhouses, yards and fields, for the purpose of consuming such crops or produce, as such sheriff or other officer shall allot or assign to them for that purpose, and which such tenant or occupier would have been entitled to and ought to have used for the like purpose on such lands.

Sheriff may dispose of produce, subject to an agreement to expend it on the land.

IV. And be it further enacted, That such sheriff or other officer shall, on the request of any landlord or owner who shall be aggrieved by any breach of such agreement, permit such landlord or owner to bring any action or actions in the name of such sheriff or other officer, for the recovery of damages in respect of such breach, such landlord or owner having nevertheless fully indemnified such sheriff or other officer against all costs whatsoever, and all loss and damage, before any such action shall be commenced.

Sheriff to assign agreement to landlord.

V. And be it further enacted, That such sheriff or other officer shall, before any sale of any crops or produce of any lands let to farm shall be proceeded in, make, by all ways and means, due enquiry within the parish where such lands shall be situate, as to the name and residence of the landlord or owner of such lands.

Sheriff to enquire as to the name and residence of the landlord.

VI. And be it further enacted, That in all cases where any purchaser or purchasers of any crop or produce hereinbefore mentioned, shall have entered into any agreement with such sheriff or other officer, touching the use and expenditure thereof on lands let to farm, it shall not be lawful for the owner or landlord of such lands to distrain for any rent on any corn, hay, straw, or other produce thereof, which, at the time of such sale and the execution of such agreement, entered into under the provisions of this Act, shall have been severed from the soil, and sold, subject to such agreement, by such sheriff or other officer; nor on any turnips, whether drawn or growing, if sold according to the provisions of this Act; nor on any horses, sheep or other cattle, nor on any beast whatsoever, nor on any waggons, carts, or other implements of husbandry, which any person or persons shall employ, keep, or use on such lands, for the purpose of threshing out, carrying or consuming any such corn, hay, straw, turnips, or other produce, under the provisions of the Act, and the agreement or agreements directed to be entered into between the sheriff or other officer and the purchaser or purchasers of such crops and produce, as hereinbefore are mentioned.

Landlords not to distrain for rent on purchasers of crops severed from the soil, or other things sold subject to agreement.

VII. And be it further enacted, That no sheriff or other officer shall, by virtue of any process whatsoever, sell or dispose of any clover, rye-grass or any artificial grass or grasses whatsoever, which shall be newly sown, and be growing under any crop of standing corn.

Sheriff not to sell any clover, &c. growing with corn.

VIII. Provided always, and be it enacted, That this Act shall not extend to any straw, turnips or other articles, which the tenant may remove from the farm consistently with some contract in writing.

Act not to affect contracts.

IX. And be it further enacted, That in every case where any action shall be brought against such sheriff or other officer, for any breach of or omission of compliance with the provisions of this Act, no plaintiff shall be entitled to recover any damages against such sheriff or other officer, unless it shall be proved on the trial of such action, that such breach or omission was wilful on the part of such sheriff or other officer.

Sheriff not to be liable for damages, unless for wilful omission.

X. And be it further enacted, That no sheriff or under-sheriff, nor any or either of their deputies, agents, bailiffs, or servants, nor any person or persons who shall purchase any hay, straw, chaff, turnips, grass

No. XXXIII. 56 Geo. III. c. 50.

Indemnity to sheriff and others acting under the provisions of this Act.

or grasses, or other produce and things hereinbefore mentioned, under the provisions of this Act, nor his, her, or their servant or servants, shall be deemed or taken to be a trespasser by reason of his, her, or their coming upon or remaining in possession of any barns or other buildings, yards or fields, for the purpose of threshing out or consuming any straw, hay, turnips, or other produce hereinbefore mentioned, under the provisions of this Act, or for doing any matter or thing whatsoever, fit and necessary to be done for the purpose of executing the same, and carrying into effect all stipulations contained in any agreement made under such provisions, though such acts shall have been done by such sheriff or other officer, and by such person or persons, his, her or their servants, after the return of the process under which such sheriff or other officer shall have acted.

Assignee of bankrupt, &c. not to take any crop in any other way than the bankrupt would have been entitled to do.

XI. And be it further enacted, That no assignee of any bankrupt, or of any insolvent debtor's estate, nor any assignee under any bill of sale, nor any purchaser of the goods, chattels, stock or crop of any person or persons engaged or employed in husbandry on any lands let to farm, shall take, use, or dispose of any hay, straw, grass or grasses, turnips, or other roots, or any other produce of such lands, or any manure, compost, ashes, sea-weed or other dressings intended for such lands, and being thereon, in any other manner and for any other purpose than such bankrupt, insolvent debtor, or other person so employed in husbandry, ought to have taken used or disposed of the same, if no commission of bankruptcy had issued, or no such assignment or assignments had been executed, or sale made

# PART IV.

## CLASS XIII.

### *Error and False Judgment.*

### [ No. I. ] 52 Henry III. c. 19.—None but the King shall hold plea of false judgment.

'NONE from henceforth (except our Lord the King) shall hold in his Court any plea of false judgment, given in the court of his tenants; for such plea specially belongeth to the crown and dignity of our Lord the King' 52 Henry III. c. 19.

### [ No. II. ] 13 Edward I. stat. 1. c. 31.—An exception to a plea shall be sealed by the justices.

'WHEN one that is impleaded before any of the justices doth allege an exception, praying that the justices will allow it, which if they will not allow, if he that alleged the exception do write the same exception, and require that the justices will put to their seals for a witness, the justices shall so do; and if one will not, another of the company shall. And if the King, upon complaint made of the justices, cause the record to come before him, and the same exception be not found in the roll, and the plaintiff shew the exception written, with the seal of a justice put to, the justice shall be commanded that he appear at a certain day, either to confess or deny his seal. And if the justice cannot deny his seal they shall proceed to judgment according to the same exception, as it ought to be allowed or disallowed.' (1) 13 Edward I. st. 1. c. 31.

(1) For the form and course of proceedings in bills of exceptions, see Bull. N. P. 315; Tidd's Practice, C. 38. See also the view of the subject taken by Lord Redesdale in the case of the lessee of Lawlor *v.* Murray, 1 Schoales and Lefroy, 75, in which case his Lordship superseded a writ obtained from the cursitor, without order grounded upon this statute, commanding the judges of the King's Bench in Ireland, to affix their seals to a bill of exceptions, against an order for liberty to amend the record; holding, that no officer of the court was warranted in making such writ without special order; and secondly, that if any officer was so warranted, it was not the cursitor. He observed, that the authorities in support of his opinion were few, because the writ itself had been rarely used: it had rarely been necessary to resort to it, as the judges would be most likely to seal the bill of exceptions in any case where they ought. In the marginal abstract of the case it is stated, that such writ does not lie where the exception taken is to an order of a court of law, amending one of its own records. Nor *semble* to any order made upon motion. I do not find this opinion expressed in the body of the report: but it seems in itself to be perfectly correct.

The better opinion seems to be, that a bill of exceptions does not lie in criminal cases. The following summary of the authorities is extracted from Mr. Phillips's Law of Evidence, 111. "The statute extends to the plaintiff as well as the defendant, and to a trial at bar as well as at nisi prius; but it has been doubted whether it extends to criminal cases. Lord Coke, in his exposition of the statute, states that it extends to all actions, real, personal, and mixed; but of criminal cases he makes no mention. In the case of Sir Henry Vane, (1 Lev. 68; Kel. 15; 1 Sid. 85.) who was tried for high treason, the court refused to seal a bill of exceptions, because, they said, criminal cases were not within the statute, but only actions between party and party. From this authority Mr. Serjeant Hawkins infers only, that a bill of exceptions is not allowable on an indictment for treason or felony; Pl. Cro. v. 2. c. 46. s. 210. 'Whether a bill lies not in any criminal case,' said Lord Hardwicke, 'is a point not settled;' Rex *v.* Inhabitants of Preston, Rep. temp. Hind. 251. It was allowed in the case of the King against Lord Paget and Others, on an indictment for a trespass; 1 Leon, 5; and also on an information in the nature of a quo warranto; Rex *v.* Higgins and Others, 1 Vent. 366. But Lord Hardwicke, in the case before referred to, after saying that he had known a

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[ No. III. ] 14 Edward III. stat. 1. c. 5.—Delays of judgments in other Courts shall be redressed in Parliament.

"ITEM, Because divers mischiefs have happened for that in divers "places, as well in the Chancery as in the King's Bench, the

bill of exceptions allowed in informations in the Exchequer, which are civil suits for the King's debt, added, that it has never been determined to lie in mere criminal proceedings in other courts.

From the language of the statute itself, I certainly should not infer its application to criminal cases. The rule that the King is not bound by the general words of an Act of Parliament would also seem to militate against such construction; and perhaps the cases in the Exchequer, which are in opposition to this application of the maxim, may have passed without discussion or opposition. The general feeling of the profession upon the subject is most strongly evinced by the fact of no such bill of exceptions having been tendered for a very long period of time, although many important questions of criminal law have been discussed with great warmth, and with strong feelings of opposition to the opinions of the court, of which the much agitated question of the functions of the jury in cases of libel, previous to the statute of 32 George III., is perhaps the most prominent instance. Upon referring to the case in 1 Leon. 5, which is the only direct authority alleged in support of the opposite opinion, it appears that the Bishop of Coventry and Lichfield, being indicted for a trespass in the close of Lord Paget, challenged the array, because that he being a lord of Parliament no knight was returned, upon which the Queen's counsel did demur in law; but at last, for expedition, &c. the court delivered to the counsel for the bishop, a bill sealed to secure him the advantage of the said challenge, and the inquest was taken *de bene esse*. The case was finally disposed of in favour of the defendant upon an objection to the indictment, and no argument or discussion whatever took place as to the general question of the admitting bills of exceptions in criminal cases; but the course seems to have been adopted by general consent at the suggestion of the judge, as the most convenient way of saving the question of challenge. It seems doubtful whether the challenge of the array is quite the proper object of a bill of exceptions, and whether such challenge ought not, independently of the statute, to be introduced on the record, so as to entitle the party to the benefit of a writ of error in case of its being overruled.

The case of the *quo warranto* in Ventr. seems to give as little direct support to the general right to a bill of exceptions, even in that mixed form of proceeding. That was also the case of a challenge to the jury, on the ground of their not being freeholders. The court held, that the statutes requiring jurymen to have so much freehold, do not extend to corporate towns. It was then said, that by the common law jurymen were to be freeholders. But the court overruled the challenge; but at the importunity of the counsel they allowed a bill of exceptions, and a verdict passed against the defendants, and afterwards it was moved in arrest of judgment upon the point. But the court would not admit the matter to be debated before them, (though divers precedents of the like nature were offered) because they said they had delivered their opinions before, and the redress might be had upon writ of error.

In this case also it is observable, that there was no discussion as to the general question of a bill of exceptions being admissible in regard to the particular kind of proceeding. The bill of exceptions is stated to be admitted at the importunity of the defendant's counsel; but it is certainly contrary to the general understanding respecting this proceeding, that the admission or rejection of it shall be discretionary in the court; and I apprehend that in all cases where a bill of exceptions is held properly to lie, it is considered as perfectly a matter *de jure*, to require an acceptance of the tender of it.

Bills of exceptions are in practice not frequently resorted to, which I think is rather to be regretted as far as regards the general interests of legal science, and the due investigation of those principles, upon which it is most important to establish general conclusions of jurisprudence. It is impossible to deny the existence of a certain feeling of disrespect supposed to be connected with them. Of this, one of the strongest proofs is the apology by which they are always accompanied, and the declaration of inoffensiveness with which they are as constantly received; whereas, to have their proper effect and influence in the administration of justice, it is desirable that they should pass without any adventitious notice, and be treated as matter of course in the same manner as a common motion for a new trial. Sir James Burrough, in recording the great quantity of business dispatched in the Court of King's Bench at the period comprised in the first four volumes of his Reports, (insignificant as it was in comparison to the present) and noticing the small proportion of writs in London and Middlesex which afterwards came before the court in the shape of special verdicts, special cases, motions for new trial, or in arrest of judgment, adds that of a bill of exceptions there had been no instance, which certainly affords undeniable evidence of the kind of feeling adverted to.

The advantage arising from the full and deliberate discussion of a question introduced in the record, is strongly exemplified in the

"Common Bench, and in the Exchequer before the justices assigned, and other justices to hear and determine deputed, the judgments have been delayed, sometime by difficulty, and sometime by divers opinions of the judges, and sometime for some other cause;" "it is assented, established, and accorded, That from

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famous case of Bent and Baker, in which many vague notions respecting the competence of witnesses, which had before prevailed, were fully refuted, and the doctrine was reduced to a plain, general, and intelligible principle. In cases where the objection to be encountered relates to evidence supposed to be improperly received, the party taking the exception cannot be met by the observation, (which sometimes prevails upon motions for new trials,) that independently of the evidence objected to, there was sufficient to warrant the jury to come to the same conclusion, when possibly the particular evidence may have been the connecting link upon which the credit of all the rest may have depended. In some cases, as where the objection is to the want of a proper stamp, the ground of such objection may be removed in the event of obtaining a new trial. The expense attending the proceeding by writ of error, in which alone a bill of exceptions is of any avail, is sometimes considered as a reason against resorting to it; but I am inclined to think, that the expenses of a second trial at nisi prius would generally exceed those of removing the record; although in this respect much will in every case depend upon adventitious circumstances I certainly think that it would be a considerable improvement if the law in this respect were altered, and that a bill of exceptions taken at nisi prius might be argued in the first instance in the court in which the action is brought. At the time of passing the statute, and long afterwards, almost all important issues were tried at bar, a mode of trial which is now almost entirely discontinued, and of which I do not remember three instances in civil cases. The sittings at nisi prius in Middlesex were not instituted until a comparatively modern period, and the summary relief given upon motions for new trials was not introduced until near four centuries after the passing of the Act. The discussion of exceptions in the same court would at that time have been very much an appeal *ab eodem ad eundem;* whereas at present that objection would not apply, and the other difficulties at present operating against this mode of reserving the discussion of a disputed question, would be in a great measure removed.

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A demurrer to evidence coincides with a bill of exceptions in the circumstance that it is a means whereby the party can, at his own discretion, introduce the point which he contends for on the record; but the cases in which there is a convenient opportunity of doing so are but unfrequent, and the instances of this procedure are, I apprehend, still more rare than those of bills of exceptions. In order to take this course, not only the truth of the evidence must be admitted, and withdrawn from the jury, but the presumptions and inferences to be deduced from such facts must be also conceded. See upon this subject, Wright *v.* Pindar, Alleyn, 18, cited 2 H. B. 208. The following view of the subject by Buller, J. in Cocksedge *v.* Fanshaw, Doug. 134, (the judgment of the court, in conformity to which was affirmed in the Exchequer Chamber and House of Lords, n. ibid.) is very distinct:

"Upon the question,—What is the nature of a demurrer to evidence? I think Mr. Davenport (the counsel for the defendant) has gone a great way too far. It is the province of a jury alone to judge of the truth of facts and the credibility of witnesses, and the party cannot, by a demurrer to evidence or any other means, take that province from them, and draw such questions *ad aliud examen.* I think the plain and simple rule is this:—The demurrer admits the truth of all facts, which, upon the evidence stated, might be found by the jury in favour of the party offering the evidence. Mr. Davenport puts the case of a special verdict, and says, the reason for a demurrer is, that the party demurring does not choose to trust the jury. In a certain degree that is true: but the reason of not trusting the jury is, because they may, if they please, refuse to find a special verdict, and then the facts never appear on the record. But whether the case comes before the court on a demurrer to evidence, or a special verdict, the law is the same. I agree with Mr. Wood in his definition of a demurrer to evidence, *viz.* that it admits all matters of fact which a jury might find, and only brings the demurrer upon the inference, in point of law, from those facts before the court."

The matter was brought to a more precise point by the opinion of the judges, as delivered by Eyre, C. J., in Gibson and Johnson *v.* Hunter, 2 H. B. 187, 209, in Dom. Proc., in which, after an examination of preceding authorities, he stated it to be the answer of the judges to a question proposed by the House, "that upon the state of the evidence given for the plaintiff, it was not competent to the defendants to insist upon the jury being discharged from giving a verdict by demurring to the evidence, and obliging the plaintiff to join in demurrer, without distinctly admitting upon the record every fact and every conclusion which the evidence given for the plaintiff tended to prove."

In cases which can be fairly brought within this rule, and where the matter in dispute is reduced to a plain and distinct point of law, I apprehend that a demurrer to evidence, however unusual, would in many cases be found a very judicious course of proceeding, as well in respect of the interests of the immediate parties as in producing a solemn and deliberate decision upon the legal question.

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With respect to special verdicts, these are considered by Sir W. Blackstone, 3 Com. 377,

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'henceforth at every Parliament shall be chosen a prelate, two earls, 'and two barons, which shall have commission and power of the King 'to hear by petition delivered to them, the complaints of all those that 'will complain them of such delays or grievances done to them; and 'they shall have power to cause to come before them at *Westminster*,

as grounded upon stat. West. 2d. 13 Edward I. c. 30 s. 2., (*ante*, Class I. No. 4) which provides, that "the justices assigned to take assizes shall not compel the jurors to say precisely whether it be a disseisin or not, so that they do shew the truth of the deed, and require aid of the justices. But if they of their own head will say, that it is disseisin, their verdict shall be admitted at their own peril." This peril, at the time of passing the Act, and when the proceeding by attaint was in full force, was not a mere empty sound. But the language of the statute does not by any means import that special verdicts were previously unknown; and Lord Coke, in his Commentary upon the statute, 2 Inst. 425, says,—"In the end it hath been resolved, that in all actions, real, personal, and mixed, and upon all issues, joint, special, or general, the jury might find the special matter of fact pertinent and binding only to the issue joined, and thereupon pray the discretion of the court for the law, and this the jury might do at the common law, not only in cases between party and party, whereof this Act putteth an example of the assize, but also in pleas of the Crown, which is a proof of the common law; for if this Act had made a new law, and that other like cases between party and party had been taken by equity, yet the King had not been bound thereby." It may be here incidentally noted, that this observation confirms the opinion already expressed against the right to tender a bill of exceptions in criminal proceedings, as there is no question as to the statute being in that respect a new law.

In comparing special verdicts with special cases, it is a well known distinction that the latter form no part of the record, and therefore cannot be made the subject of review. Upon a special verdict, if the judges are equally divided, nothing can be done, but the matter remains in suspence. but if the verdict is taken for the plaintiff subject to a case, and there is an equal division, I apprehend the course to be, the judgment will be given according to the verdict. This may sometimes operate materially to the disadvantage of defendants, as the statement of the case by no means necessarily imports an opinion of the court of nisi prius in favour of the plaintiff.

Another distinction, which I apprehend to exist between special cases and special verdicts is, that in the latter every thing must be formally found, and nothing can be presumed as the actual conversion in trover, of which the demand and refusal are only evidence, but that the same particularly is not requisite with respect to special cases, which are rather in the nature of a reference to the court, as to the direction which should properly have been given to the jury at the trial.

In a former publication, after noticing the case of Roe on the demise of Reade *v.* Reade, 8 T. R. 123, in which Lord Kenyon laid it down, that when the beneficial enjoyment has given rise to suppose that there possibly may have been a conveyance to the person equitably entitled, a jury may be allowed to presume a conveyance, but if it appeared on a special verdict *or special case*, that the legal estate was outstanding in another person, the party not clothed with the legal estate cannot recover in a court of law; I took the liberty to observe that I perfectly acceded to this position, as it applies to the case of special verdicts, but that with respect to a special case, I did not think the doctrine equally clear; for that such a case is in its principle a reference to the court respecting what ought to have been done at the trial, and had been introduced in lieu of a former practice for the judge to reserve a case for his own subsequent consideration; that if the conveyance of the legal estate is, with reference to the case, a question of presumption *upon the actual fact*, and upon which the jury ought to be directed to exercise their judgment, and to decide whether such fact existed or not, in the same manner as they would exercise a judgment upon any other matter of presumptive evidence, the court cannot assume the office of the jury, and infer the fact themselves. But if the presumption is such as ought *de jure* to be made in pursuance of rules generally laid down; if the jury are not to be directed to consider whether the inference does or does not arise, but are to be told that it is a presumption which they are to make in consequence of an established rule of practice, in order to prevent the party being turned round upon the legal objection; in other words, if it is an established legal fiction, the omission of stating it in a special case ought not to be material; for the object of such a case is either to ascertain some other point respecting the title, or to decide whether it is a case to which the presumption *de jure*, or legal fiction, properly applies? whether, independent of the finding of the jury upon any thing which ought [not] to be submitted to them as a disputable fact, the plaintiff is entitled to recover? and to have a more deliberate consideration of the questions intended to be particularly reserved, than the nature of the proceeding at nisi prius will admit. A special verdict in ejectment must formally state the lease, entry and ouster of the nominal plaintiff, but this is never done in a special case; the one being, in respect of formalities and matters of course, governed by principles essentially different from the other. —View of Lord Mansfield's Decisions, Vol. II. p. 236, n.—A practice has lately been introduced of reserving a special case, with liberty to turn it into a special verdict, which is a very convenient course of proceeding, as it is attended with a saving of expense in the first

'or else where the places of any of them shall be, the tenor of records 'and processes of such judgments so delayed, and to cause the same 'justices to come before them which shall be then present, to hear their 'cause and reasons of such delay; which cause and reason so heard, by 'good advice of themselves, the chancellor, treasurer, the justices of

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instance, and allows the benefit of a further revision of the disputed question.

With respect to the facility of granting cases, and the mode of stating them, I have often regretted the deviation which has taken place from the course pursued by Lord Mansfield, and which was stated by himself in Luke *v.* Lyde, 1 Bur. 887, as follows: "He said he had always inclined (even when he had himself no doubt) to make cases for the opinion of the court, not only for the greater satisfaction of the parties in the particular cause, but to prevent other disputes, by making the rules of law, and the grounds on which they are established, certain and notorious; but he took particular care that they should not cause delay or expense; and therefore he always dictated a case in court, and saw it signed before another cause was called, and always made it a rule that it should be set down to be argued within the first four days of the term." Mr. Justice Park, in the Introduction to his Treatise on Insurance, contrasts this course with the preceding practice, stating that it had been the custom when cases were reserved, to leave it to the counsel on both sides to draw them up at leisure. This introduced considerable delays, for every fact became a subject of dispute; and frequently, from the hurry of business and other avocations of counsel, the case was neglected for a considerable time before it was ready for the inspection of the court.

With Lord Mansfield's presidency, the practice introduced by him absolutely ceased, and the inconveniences just mentioned as resulting from the previous practice, have been renewed in a very aggravated degree. Great as Lord Kenyon's excellencies indisputably were, the impatience and irritability of his temper were a most serious disadvantage in the administration of justice; and nothing would have been more repugnant to his habits, than to have adopted the course of deliberately dictating a case as followed by his predecessor. In modern practice, as far as my observation goes, the reservation of a special case generally induces a cavil upon some verbal nicety upon some bye point, some collateral and incidental question, upon which a decision may be obtained of the particular case, independently of the general question which was the object of the case being reserved; and I cannot but think that this course has too frequently met with the encouragement of the courts, who have preferred resting upon the special ground of some incidental finding, to entering into the discussion of the general question intended to be reserved.

I am not equally prepared to join in the commendation of the learned writer on the law of insurance, in his panegyric on another alteration in the course of practice introduced under the auspices of Lord Mansfield; before whose time it is observed, that it was almost a matter of course not to decide any case without hearing two arguments upon it; but in the very first cause which is reported of his lordship's decisions, he expressed himself to this effect:—"When we have no doubt, we ought not to put the parties to the delay and expense of a further argument, nor leave other persons, who may be interested in the determination of a point of a general nature, unnecessarily under the anxiety of suspence." Without insisting upon the expediency of allowing a second argument, merely as a matter of course, I do think it is to be regretted, that that practice has been so very generally discontinued, and that the character of mere dispatch has been in modern times allowed to hold so high a place in the scale of judicial reputation. To every person of reflection and observation, many instances must occur, in which first impressions of very considerable force have yielded to the subsequent views, arising from a more enlarged and deliberate consideration: and perhaps it may not be unworthy of remark, that the case of Reynard and Chase, with which the general deviation from the preceding cases originated, is one which by no means bears the character of undisputed rectitude of decision. In the greater part of the suggestions contained in the notes to the present work, the principal object in contemplation is, the obviating unnecessary expense or delay; but the most beneficial means of attaining that end are those which are supplied by such arrangements as may present the real object in dispute to the consideration of the court in the most easy and commodious manner, and defeat the artifices of chicanery and oppression. But some sacrifice is due to the object of producing such a decision upon an immediate case, as may have the effect of eliciting correct principles, for the future guidance of the profession and the public, and may prevent observations from having the character of authority, which, upon being fairly canvassed, would not be found to bear the test of examination. In the long list of cases which now occur at the beginning of every number of reports, where rules to shew cause why there should not be new trials are refused upon the first impression of the case, the instances are not unfrequent of points, which are at least of sufficient importance to merit a deliberate enquiry. The delay of a second argument, with the exception of the period of the long vacation, is not considerable; and there is no part of legal proceedings, in which the expense bears so small a proportion to the magnitude of the object, as a solemn argument. The strong conviction of the importance, which I have always felt and often expressed, of giving to every legal discussion of which the event might be material, as a precedent, that mature attention, which is the best security from error and misconception,

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'the one bench and of the other, and other of the King's counsel, as 'many and such as they shall think convenient, shall proceed to take a 'good accord, and make a good judgment; and according to the same 'accord so taken, the tenor of the said record, together with the judg-'ment which shall be accorded, shall be remanded before the justices,

has received a material confirmation from the very last number of reports that has hitherto reached me; wherein it is said by the Chief Justice of the Common Pleas (a)—"I am afraid there is no case from which, owing either to the fallibility of the judges who decided it, or some other cause, an argument like that which has now been made use of might not be raised for the purpose of overturning the judgment. I dare say it almost always happens, that among the reasons given by the judges for their opinions, there is something dropped, either directly or collaterally, which, taken by itself, would be insufficient to support the decision. and formerly, I remember, provided the judgment, taken together, were sufficient, such circumstances would have passed unnoticed."

The circumstance that it always or indeed often happens that something is dropped by judges which cannot be supported, cannot but be regarded as matter of regret, when it is recollected that, in forming an opinion upon the effect of a particular case, the general course has been, not merely to look at the point decided, as standing alone and unaccompanied by the reasons of it, but to consider the reasons as incorporated with the decision; and although it is too much to expect that, in the multiplicity of judicial business, no opinion shall be expressed which will not bear the test of a critical examination, it is certainly extremely desirable to avoid a course which renders the expression of such opinions more probable than it would be, if the forming, as well as the expression of any judgment, were reserved until the court were fully in possession of the view of the case which may be presented by those who have made it the subject of previous attention; and if the benefit of dispatch were more generally regarded as subordinate to the higher objects not only of coming to a correct decision of the particular question, but of rendering the grounds and motives of that decision so clear and explicit, as to afford a secure direction in all subsequent cases affected by an analogy of principle.

But if a system of greater deliberation is desirable with respect to questions submitted to the solemn consideration of the courts, how much more important would it be to check the practice of ascribing the character of judicial authority to the sudden views of a subject which may be taken upon trials at *nisi prius!* and how much is it to be regretted that collections of such opinions are allowed to occupy so important a place in our juridical libraries, and are introduced into some of our treatises as the ground of general propositions of law! I apprehend that the profession are becoming daily sensible of this inconvenience; and some recent allusions to the use which is made of these decisions, by the learned judge whose opinion has last been quoted, may have a tendency to check a practice so injurious to accurate discussion, and prevent an argument, supported by the correct principles of legal reasoning, from being overturned by the mere authority of a case in Mr. Peake or Mr. Espinasse. I am glad to learn that, in a new edition of Comyns's Digest undertaken by several learned members of the profession, a resolution has been taken not to admit of the introduction of any *nisi prius* cases.

My own limited sphere of observation is almost entirely confined to this department of judicial business; and I have often most sensibly felt the inconvenience which has resulted from indulging a spirit of anticipation, instead of dispassionately attending to the suggestions, which, however imperfect, have not been hasty or inconsiderate, intended to be offered on behalf of a party whose comfort or ruin might depend on the event; and the painful situation of an advocate condemned to enter into a desultory combat with a judge, who, by the premature expression of his opinion, may almost acquire the feelings of a party to the cause; or, (which is still more distressing) reduced to relinquish the maintenance of rights which he is entrusted to support, and in favour of which he entertains a sincere opinion, founded upon laborious examination, in consequence of the agitation resulting from so unequal a contest. Whenever this practice prevails, it is obvious that the talent of snip-snap altercation, and the strength of lungs in a scramble for attention, are qualities of more importance than any previous application to the elucidation of the real merits of a cause.

Decisions at *nisi prius* are sometimes suffered to acquire an authority from the acquiescence of counsel of eminence, who have declined submitting the propriety of them to the revision of the court; but so many incidental motives of inconvenience, weariness, and expense may operate upon a party submitting to the first decision against him, that it is very seldom that this argument can be relied upon with an adequate confidence of its being well founded in point of fact; and even taking it at the highest, it has very little claim to be ranked in opposition to any immediate arguments upon the merits, which would otherwise be considered as entitled to serious attention.—Connected with this observation is the influence sometimes ascribed to the tacit authority of a case, in which a point that afterwards becomes the subject of controversy was involved, according to the statement of the facts; but which passed unnoticed in the discussion of other questions to which the argument was particularly directed, and must have been taken for granted in

(a) Powley v. Newton, 2 Marshall, 149.

'before whom the plea did depend, and that they hastily go to give 'judgment according to the same record; and in case it seemeth to 'them, that the difficulty be so great, that it may not well be deter-'mined without assent of the Parliament, That the said tenor or tenors

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order to render the actual controversy at all material. To suppose that this arose from deliberate intention, and from a settled conviction that the point, if taken, would have been found untenable, is an assumption which is often at variance with the truth of the facts; and every person's experience will convince him of the many instances in which he has entered into a controversy upon a collateral inquiry, which might have been prevented if a preliminary ground of argument had in proper time occurred to his attention. The objection of such tacit authorities can never be properly urged, when it is admitted that the point supposed to be involved in them would, if presented, have been fairly susceptible of doubt and controversy. Much less can it be entitled to prevail in opposition to what upon fair investigation may be found to be the true conclusion upon the subject, independently of such supposed authority.

These observations were forcibly impressed on my mind by the case of Isherwood *v.* Oldknow, 3 M. & S. 382., which turned upon the important question, whether an action of covenant could be maintained by a person in remainder upon a lease made by a tenant for life, under a power? and which certainly was open to very considerable discussion; but in which considerable reliance was placed upon the tacit authority of former cases, wherein the discussion had turned upon the conformity of leases to the power under which they possessed, in respect of covenants entered into by the lessee; and which covenants I admit would not have been very material, if it had not been taken for granted that an action could have been maintained upon them by the party in remainder: but the point so taken for granted certainly was attended with sufficient difficulty to render it manifest, that it had been rather overlooked in consequence of the attention being directed to another object, than abandoned upon deliberate consideration, as unworthy of argument.

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* Upon a case coming before a court of error or appeal, I had conceived it to be clear, that the question to be discussed would depend upon the propriety of the original judgment, as appearing upon the face of authentic proceedings, without reference to any statement of what passed in the original discussion; but in Charnley *v.* Dunsavy, in the house of Lords, 2 Schoales and Lefroy 690, an opinion is strongly expressed by Lord Redesdale and Lord Eldon, that upon an appeal in equity no point ought to be made at the bar of the House, which was not made below, and which therefore may be considered as having been waved. If such waver can be collected from the course of the proceedings themselves, I am perfectly ready to accede to this view of the subject, and which, in many cases, may be fairly taken upon cases in equity, as immediately arising on the proceedings, without being formally stated. But in the case of the King *v.* The West Riding of the County of York, 2 Dow P. C. 2., Lord Eldon seems to adopt the same principle, as applicable to a case arising upon a writ of error from a court of law; deducing the fact from the printed authority of the case as contained in East's Reports. No decision was pronounced upon the question, the objection being waved by the counsel. But the propriety of the doctrine alluded to certainly requires a very serious consideration. Admitting that it would be an improvement in the law if no objections could be made in a court of error or appeal, which was not formally put upon the record as a ground of objection in the court below, I think it will require much consideration, before it can be admitted that a court of error should give judgment, according to the existing state of the law, in favour of a proceeding confessedly erroneous. Waving the observation that many cases are allowed to pass without argument in the original court, with the express view of taking the opinion of a court of error in the first instance, the great difficulty of the present question relates to the mode in which the fact, as to what objections were originally made, can be authentically ascertained; whether, in case of an appeal to the House of Lords, it is to depend upon the memory of any noble lord who may have concurred in the original decision, so as to make a distinction between the case in which any such lord may be present, and others; whether a certificate shall be applied for to the original court, as to the recollection of the arguments and proceedings; whether the matter shall be open to suggestions, supported only by altercation and opposite statements at the bar, or whether the character of solemn authority shall be applied to any accidental publications, in which the proceedings may have been reported for the use of the profession. In the introduction of any novel practice by mere judicial authority, it is impossible to give too minute and extended a consideration to the consequences to which it may lead; and therefore I have taken the liberty of submitting these observations to those who can best decide upon their propriety.

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I am fully aware that in this note I have digressed into the examination of several subjects not arising out of the statute to which they are attached, nor very intimately connected with each other. But feeling that the subjects adverted to are in themselves intimately connected with the beneficial administration of the law, I have ventured to trespass upon the patience of the public, by the discussion of them in that part of the Work which appeared to afford the fairest opportunity for their introduction.

No. III. 14 Edw. III. st. 1. c. 5.

'shall be brought by the said prelate, earls, and barons unto the next 'Parliament, and there shall be a final accord taken what judgment 'ought to be given in this case; and according to this accord it shall be 'commanded to the judges, before whom the plea did depend, that they 'shall proceed to give judgment without delay. And to begin to do 'remedy upon this ordinance, it is assented, that a commission and a 'power shall be granted to the Archbishop of *Canterbury*, the Earls of '*Arundel* and *Huntingdon*, the Lord of *Wake*, and the Lord *Ralfe* '*Basset*, to endure till the next Parliament. And though the ministers 'have made an oath before this time, yet nevertheless to remember them 'of the same oath, it is assented, that as well the chancellor, treasurer, 'keeper of the privy seal, the justices of the one bench and of the other, 'the chancellor, barons of the Exchequer, as the justices assigned, and 'all they that do meddle in the said places under them, by the advice of 'the same archbishop, earls, and barons, shall make an oath well and 'lawfully to serve the King and his people. And by the advice of the said 'prelate, earls and barons, be it ordained to increase the number of the 'ministers when need shall be, and them to diminish in the same manner, 'and so from time to time, when officers shall be newly put in the said 'offices, they shall be sworn in the same manner.' (1)

The officers' oath to serve the King and his people.

## [No. IV.] 1 Edward III. stat. 1. c. 4.—Trial of an Averment in a Writ of false Judgment.

(1) I have chosen to insert this obsolete statute, upon a supposition that at some future period it may be thought eligible to revive the institution which it prescribes, if not according to the literal precedent, by the adoption of a tribunal for the decision of questions of error and appeal, founded upon analogous principles. The overwhelming increase in every department of public business, judicial or parliamentary, requires a degree of application very greatly exceeding any that was requisite, not only at the time of the original establishment, but even within the memory of the present generation. In order to meet this increase of business with a suitable attention to convenience and dispatch, different arrangements have been from time to time made, and others will probably be rendered equally necessary. I do not think that it would be desirable altogether to abolish the jurisdiction of the House of Lords, as an aggregate body, in matters of judicial appeal; and think it would be preferable, if any establishment should be adopted of the nature suggested, to reserve a power by special order of hearing such cases at the bar of the house. It is notorious that the solemnity of that high tribunal, according to the existing practice, is attached rather to the place than to the course of proceeding, and that the majority of appeals from the three parts of the united Kingdom are in substance and effect to the Lord Chancellor individually; the presence of two other peers being necessary, but the particular individuals being in a constant course of fluctuation, even during the course of the particular cause; and that the motion of the Lord Chancellor is in effect the judgment of the case. At present a very honourable exception prevails to this practice, in the habitual attendance of a noble person, formerly holding an exalted judicial station, and whose legal erudition is universally admitted to be of the highest degree. The same assistance would in all probability be afforded in case of a different arrangement being made, according to the idea at present suggested. I have only a recollection of two instances, in a period of upwards of thirty years, in which the judicial business of the House of Lords, in cases of appeal, was considered as an object of general attention by the members of that body: the one was the well-known case of the Bishop of London v. Fytche, in which a decision took place contrary to the opinion of the majority of the judges, and contrary to what has been generally considered, independently of the direct authority of the judgment, as the true legal conclusion upon the subject: the other was an appeal from the Court of Chancery, respecting the appointment of a guardian; in the decision of which, so far as appeared from the diurnal publications, there was a greater admixture of personal and political feeling, than appears in the accustomed and ordinary administration of justice. There are some very important observations on this subject at the conclusion of Sir Matthew Hale's valuable work on the Jurisdiction of the Lords' House of Parliament.

The value of the alteration in the judicial proceedings of the House of Commons, by the appointment of committees for the trial of controverted elections, is generally felt and admitted, as being one of the greatest improvements of the constitution in modern times. And I apprehend that the extension of a similar principle, not only to the judicial functions of the House of Lords, but to the legislative proceedings of both houses, upon subjects of a local and personal nature, would be attended with very beneficial consequences.

No. IV. 1 Edw. III. st. 1. c. 4.

'ITEM, It is accorded, ordained, and established in amendment of the law, That when a record cometh into the King's court by writ of false judgment, in case where the party allegeth that the record is otherwise than the court doth record the same, the averment shall be received of the good country, and of them which were present in the court when the record was made, if they do come with others of the country by the sheriff's return; and if they come not, the inquest shall be taken by the good country.'

## [ No. V. ] 31 Edward III. stat. 1. c. 12.—The Lord Chancellor and Lord Treasurer shall examine erroneous Judgments given in the Exchequer.

31 Edward III. st. 1. c. 12.

'ITEM, it is accorded and established, That in all cases touching the King, or other persons, where a man complaineth of error made in process in the Exchequer, The chancellor and treasurer shall cause to come before them in any chamber of council nigh the Exchequer, the record of the process out of the Exchequer, taking to them the justices and other sage persons, such as to them seemeth to be taken; and shall also cause to be called before them the barons of the Exchequer, to hear their informations, and the causes of their judgments, and thereupon shall duly examine the business; and if any error be found, they shall correct and amend the rolls, and after send them into the Exchequer for to make thereof execution as pertaineth.'

## [ No. VI. ] 9 Richard II. c. 3.—A Writ of Error or Attaint maintainable by him in the Reversion.

9 Richard II. c. 3.

He in the reversion shall have an attaint or writ of error upon a false verdict found, or an erroneous judgment given against the particular tenant.

'ITEM it is accorded and assented, That if the tenant for term of life, tenant in dower, tenant by the courtesey of *England*, or tenant in tail after possibility of issue extinct, be impleaded, and plead to an inquest, and lose by the oath of twelve, or by default, or in other manner, that he to whom the reversion of the tenements so lost doth appertain at the time of such judgment given, his heirs or successors, shall have an action by writ of attaint, to attaint the same oath, if they will assign the same oath to be false, and also by writ of error, if error be found in the record of such judgment, as well as in the life of such tenants that so do lose, as after their death. And if such judgment erroneous be reversed, or such false oath be found, that the tenant which did lose by the first judgment, if he be in life, shall be restored to his possession of the tenements so lost, with the issues in the mean time, and the party pursuing, to the arrearages of the rent, if any be due of the same tenements. And if such tenant be dead at the time of the judgment given upon such writs of attaint and of error, that restitution of the said tenements be made to the party pursuing, with the issues after the death of the said tenant, together with the arrearages of the rent, if any to him were due in the life of the said tenant.

He in the reversion alleageth that the particular tenant was of covin with the demandant.

'II. Provided nevertheless, that although the tenant which so did lose by the first judgment be in life, and the party pursuing will allege that the same tenant was of covin, and of assent of the demandant which recovered, that such tenements ought to be lost, that restitution of the same tenements be made to the same party pursuing, with the issues and arrearages, as afore is said, saving to such tenant his action by writ of *scire facias*, out of the same judgment so reversed or given, or writ of attaint, if he will traverse the covin and assent aforesaid, and otherwise not. And that this statute hold place of judgments to be given in time to come, and also of two judgments late given in the King's Bench, in two pleas of error, the one betwixt *Edmund Frances* and *Ideyn* his wife, demandants, and *Robert Westby* and other tenants of certain tenements in *Oxenford*, and in the suburbs of the same town,

The particular tenant's remedy to traverse the covin.

No. VI.
9 Rich. II.
c. 3.

'and the other betwixt the said *Edmund* and *Ideyn* demandants, and '*Richard Cornwall* and *Isabel* his wife and others tenants of certain 'tenements in the same town, of which tenements the reversion at the 'time of the said two judgments given did pertain to the master and 'scholars of the college of the *University Hall* in *Oxenford*, as it is said, 'so that the master and scholars may have and do their suit by writ of 'attaint or of error of the same judgments, as to them best shall seem, 'according to the form of this statute.'

## [ No. VII. ] 4 Henry IV. c. 23.—Judgments given shall continue until they shall be reversed by Attaint or Error.

4 Henry IV.
c. 23.

"ITEM, Where as well in plea real as in plea personal, after judgment "given in the courts of our Lord the King, the parties be made to "come upon grievous pain, sometime before the King himself, some-"time before the King's council, and sometimes to the Parliament, to "answer there of new, to the great impoverishing of the parties afore-"said, and in the subversion of the common law of the land;" 'it is 'ordained and stablished, That after judgment given in the courts of 'our Lord the King, the parties and their heirs shall be thereof in peace, 'until the judgment be undone by attaint or by error, if there be error, 'as hath been used by the laws in the times of the King's progenitors.'

## [ No. VIII. ] 3 Henry VII. c. 10.—Costs, &c. awarded to the Plaintiff, where the Defendant sueth a Writ of Error.

3 Henry VII.
c. 10.

'ITEM, That where oftentimes plaintiff or demandant, plaintiffs or 'demandants, that have judgment to recover, be delayed of execu-'tion, for that the defendant or tenant, defendants or tenants, against 'whom judgment is given, or other that been bound by the said judg-'ment sueth a writ or writs of error to adnul and reverse the said judg-'ment, to the intent only to delay execution of the said judgment: It 'is enacted, ordained, and established, by the advice of the Lords Spirit-'ual and Temporal, and at the prayer of the Commons, in the said Parliament assembled, and by authority of the same, That if any such defendant or tenant, (1) defendants or tenants, or if any other that shall be bound by the said judgment, sue, afore execution (2) had, any writ of error (3) to reverse any such judgment, in delaying of execution, that then if the said judgment be affirmed (4) good in the said writ of error, and not erroneous, or that the said writ of error be discontinued in the default of the party, or that any person or persons that sueth writ or writs of error, be nonsued (5) in the same, that then the said person or persons, against whom the said writ of error is sued shall recover his costs (6) and damage (7) for his delay and wrongful vexation in the

(1) Extending to writs of error sued by plaintiff or demandant by 8 and 9 W. III. c. 11. sec. 2. ante, Class XI. No. 8.

(2) The statute does not apply if the writ of error is brought after execution; Eardley *v.* Turnock, Cro. Jac. 636. Vi. ac. 2 Str. 1199. So after execution as to damages and costs in ejectment, although previous to the execution for the term; Earl of Pembroke *v.* Boston, Cro. Car. 173.

(3) This extends to cases in which the plaintiff is not entitled to costs in the original action; Ferguson *v.* Rowlinson, Andr. 113, 2 Str. 1064; (accord Cro. Eliz. 616) overruling Smith *v.* Smith, Cro. Car. 425; Winne *v.* Lloyd, 1 Lev. 146, Raym. 134, contra.

(4) Extended to cases where the writ of error is quashed, 4 Anne, c. 16. ante, Pt. I. Cl. I. No. 23.

(5) The Act does not extend to the case of a writ of error nonprossed before the transcript of the record; Salt *v.* Richards, 7 E. 111.

(6) Double costs, in cases of error after judgment, are given by stat. 13 Charles II. stat. 2. c. 2. ante, Class III. No. 13.

(7) The following view of the practice of the courts respecting damages in error is, with the exception of the passage in brackets, extracted from Serjeant Williams's note to 2 Saund. 101. w.—"On a writ of error returnable in the King's Bench, that court, on motion, will

same, by discretion of the justice (1) afore whom the said writ of error is sued.

No. VIII. 3 Hen. VII. c. 10.

## [ No. IX. ] 19 Henry VII. c. 20.—Writs of Error.

19 Henry VII. c. 20. A confirmation of 3 H. 7. c. 10, touching costs awarded to the plaintiff, where the defendant sueth a writ of error.

'PRAYEN the Commons in this present Parliament assembled, That 'where at a Parliament holden at *Westminster*, in the third year of 'the reign of our sovereign Lord the King that now is, by the advice of 'the Lords Spiritual and Temporal, and the Commons, in the same 'Parliament assembled, and by the authority of the same, it was en-'acted, ordained, and established, among other things, That if any 'defendant or tenant, defendants or tenants, or any other that shall be 'bound by any judgment, sue, afore execution had, any writ of error 'to reverse any such judgment, in delaying of execution of the party, 'that then if the same judgment be affirmed good in the said writ of 'error, and not erroneous, or that the said writ of error be discontinued 'in the default of the party, or the person or persons that sueth the writ 'or writs of error be nonsuited in the same, that then the said person or 'persons, against whom the said writ of error is so sued, shall recover 'his costs and damages for his delay and wrongful vexation in the same, 'by discretion of the justices afore whom the said writ of error is sued: 'Which Act or ordinance hath not been as yet duly put in execution, 'by reason whereof, as well plaintiffs as demandants, in divers actions 'by them sued sith the making of the said statute, have been oftentimes 'delayed of their execution, to their great and importable hurt, loss, 'and charges:' Wherefore the King our sovereign Lord, by the advice of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, ordaineth, establisheth, and enacteth, That the said Act made the third year of his reign, concerning the premises, be good and effectual, and that from henceforth it be duly put in execution.

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order the master to compute interest on the sum recovered, by way of damages, from the day of signing final judgment below down to the time of affirmance, and to add the same to the costs taxed for the plaintiff in the original action; Doug. 752, Zinck *v.* Langton, note 3; and see 2 Str. 931, Bishop of London *v.* Mercers' Company; 2 Burr. 1096, 1097, Bodily *v.* Bellamy; S. C. 1 Blac. Rep. 267, 268; 2 Term Rep. 79, Entwistle *v.* Shepherd. And if, by the course of the court of error, interest is not computed in the allowance of costs on the affirmance of the judgment, the jury may give interest by way of damages from the time of signing the original judgment; 2 Term Rep. 79, Entwistle *v.* Shepherd. But in debt on a recognizance against bail in error in the Exchequer chamber, the bail are not liable to pay interest between the time of the original judgment and affirmance; though they are liable to interest from the time of the affirmance; 4 Burr. 2127, Welford *v.* Davidson; 2 Term Rep. 57, Frith *v.* Leroux. In the Exchequer chamber the officer is bound to allow double costs to the defendant in error on the affirmance of a judgment; but it is a matter entirely in the discretion of the court to allow interest on the affirmance; 2 H. Blac. 284, Shepherd *v.* Mackreth. [Where the declaration contained two counts, one for a sum certain, the other for unliquidated damages, and a general verdict was given, the Court of Exchequer chamber held that interest could not be allowed; Martin *v.* Emmote, 2 Marshall, 230. Previous to the case of Sykes *v.* Harrison, 1 B. and P. 29. the usual course was to allow only four per cent.; but in that case the court intimated that in future the allowance would be five per cent.] In the court holden before the Lord Chancellor and Treasurer and Judges (under the 31 Edward III.) for examining erroneous judgments given in the Court of Exchequer, the practice is to give interest from the day of signing judgment to the day of affirming it there, computed according to the current, and not the strictly legal, rate of interest; 2 Burr. 1097. Bodily *v.* Bellamy. In the House of Lords, sometimes very large, sometimes very small costs are given, according to the nature of the case, and the reasonableness or unreasonableness of litigating the judgment of the court below; ibid: and in order to mitigate costs, the plaintiff will sometimes withdraw his errors; Tidd's Prac. K. B. 1169." And see Johnes *v.* Johnes, 1 Dow. P. C. 1.

(1) This means the court of error; Salt *v.* Richards, 7 E. 111; and when the House of Lords affirmed the judgment, and remitted the record without awarding costs in Parliament, it was ruled that the King's Bench could not order the master to allow the costs in Parliament; Beale *v.* Thompson, 2 M. and S. 249.

No. X.
27 Elizabeth, c. 8.

Erroneous judgments given in the King's Bench by the common law are only reversible in Parliament.

## [ No. X. ] 27 Elizabeth, c. 8.—An Act for Redress of erroneous Judgments in the Court commonly called the King's Bench.

'FORASMUCH as erroneous judgments given in the court called the King's Bench, are only to be reformed by the High Court of Parliament: which Court of Parliament is not in these days so often holden as in ancient time it hath been, neither yet (in respect of greater affairs of this realm) such erroneous judgments can be well considered of and determined during the time of the Parliament, whereby the subjects of this realm are greatly hindered and delayed of justice in such cases.'

Before whom judgments given in certain actions in the King's Bench may be examined.

II. Be it therefore enacted by the authority of this present Parliament, That where any judgment shall at any time hereafter be given in the said Court of the King's Bench in any suit or action of debt, detinue, covenant, account, action upon the case, *ejectione firmæ*, or trespass, first commenced or to be first commenced there, (other than such only where the Queen's Majesty shall be party) the party plaintiff or defendant, against whom any such judgment shall be given, may at his election sue forth out of the Court of Chancery a special writ of error to be devised in the said Court of Chancery, directed to the chief justice of the said Court of the King's Bench for the time being, commanding him to cause the said record, and all things concerning the said judgment to be brought before the justices of the common bench and the barons of the Exchequer, into the Exchequer-chamber, there to be examined by the said justices of the common bench and barons aforesaid; which said justices of the common bench, and such barons of the Exchequer as are of the Coif, or six of them at the least, by virtue of this present Act, shall thereupon have full power and authority to examine all such errors as shall be assigned or found in or upon any such judgment; and thereupon to reverse or affirm the said judgment, as the law shall require, other than for errors to be assigned or found for or concerning the jurisdiction of the said Court of King's Bench, or for any want of form in any writ, return, plaint, bill, declaration or other pleading, process, verdict or proceeding whatsoever: and that after that the said judgment shall be affirmed or reversed, the said record and all things concerning the same shall be removed and brought back into the said Court of the King's Bench, that such further proceeding may be thereupon, as well for execution as otherwise, as shall appertain.

Erroneous judgment examined in Parliament.

III. And be it further enacted, That such reversal or affirmation of any such former judgment shall not be so final, but that the party who findeth him grieved therewith, shall and may sue in the High Court of Parliament for the further and due examination of the said judgment, in such sort as is now used upon erroneous judgments in the said Court of King's Bench. 14 Ed. 3. stat. 1. cap. 5. 31 Eliz. cap. 1.

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## [ No. XI. ] 31 Elizabeth, c. 1.—An Act against Discontinuances of Writs of Error in the Courts of Exchequer and King's Bench.

31 Elizabeth, c. 1.

'WHEREAS by an estatute made in the xxxi. year of the reign of King *Edward* the Third, it is enacted, that upon complaint concerning error made in the Exchequer touching the King or other persons, the Lord Chancellor and Lord Treasurer shall do to come before them in any chamber of council nigh the Exchequer, the record and process of the Exchequer, and taking to them such justices and other sage persons, as to them shall be thought meet, shall hear and determine such errors, as by the said estatute more at large appeareth: And whereas those two being great officers of the realm are employed, not only in their several offices and places of justice elsewhere, but also for other weighty affairs of the realm in council,

No. XI. 31 Elizabeth, c. 1.

'attendant on the Queen's Majesty's person and otherwise, they be 'many times upon sudden warning called away, in such wise as they 'both many times, and sometimes neither of them, can be present in 'the Exchequer at their day of adjournment in such suit of error; and 'then by not coming of them at the day of adjournment, every such 'writ of error depending is by the laws of the realm discontinued, and 'the party cannot proceed, but must begin his suit of new, to the great 'loss of the party and hindrance of justice:' For remedy whereof, be it ordained and enacted by authority of this present Parliament, That the not coming of the Lord Chancellor and Lord Treasurer, or of either of them, at the day of adjournment in any such suit of error depending by virtue of the said former estatute, shall not be any discontinuance of any such writ of error: but if both the chief justices of either bench, or any one of the said great officers, the Lord Chancellor or Lord Treasurer, shall come to the Exchequer chamber, and there be present at the day of adjournment in such suit of error, it shall be no discontinuance, but the suit shall proceed in law to all intents and purposes, as if both the Lord Chancellor and Lord Treasurer had come and been present at the day and place of adjournment: Provided always, that no judgment shall be given in any such suit or writ of error, unless both the Lord Chancellor and Lord Treasurer shall be present thereat.

The not coming of the Lord Chancellor and Lord Treasurer shall be no discontinuance of writs of error.

No judgment to be given unless both the Lords be present.

'II. And whereas in the Parliament holden in the xxvii year of the 'reign of our most gracious Sovereign Lady the Queen's Majesty, one 'Act or statute was made, intituled, "An Act for Redress of erroneous 'Judgments in the Court commonly called the King's Bench;" by which 'it is amongst other things enacted, That where any judgment shall at 'any time then after be given in the said Court of King's Bench, in any 'suit or action of debt, detinue, covenant, account, action upon the 'case, *ejectione firmæ*, or trespass, first commenced or to be first com-'menced there, other than such only where the Queen's Majesty shall 'be party; the party plaintiff or defendant against whom any such 'judgment shall be given, may at his election sue forth out of the 'Court of Chancery a special writ of error to be devised in the said 'Court of Chancery, directed to the Chief Justice of the said Court of 'King's Bench for the time being, commanding him to cause the said 'record, and all things concerning the said judgment, to be brought 'before the justices of the Common Bench and the barons of the 'Exchequer, into the Exchequer chamber, there to be examined by the 'said justices of the Common Bench and barons aforesaid. Which said 'justices of the Common Bench, and such barons of the Exchequer as 'are of the degree of the coif, or six of them at the least, by virtue of 'the same Act, shall thereupon have full power and authority to exa-'mine all such errors as shall be assigned or found in or upon any such 'judgment, and thereupon to reverse or affirm the said judgment, as 'the law shall require, other than for errors to be assigned or found for 'or concerning the jurisdiction of the said Court of King's Bench, or 'for any want of form in any writ, return, plaint, bill, declaration, or 'other pleading, process, verdict, or proceeding whatsoever: Forasmuch 'as it doth many times fall out, that the full number of the said jus-'tices of the Common Bench and barons of the Exchequer, so autho-'rized by the said statute, sometimes for want of health, sometimes 'through other weighty services and earnest occasions, cannot be pre-'sent at the days and times of the returns and continuances of the same 'writs of error; and by reason of their absence and not coming the said 'writs of error are discontinued, justice delayed, and the parties put to 'begin new suit, to their great charges and prejudice:' For remedy thereof be it also enacted by the authority aforesaid, That from henceforth, if the full number of the justices and barons authorized by the said Act come not at the day or time of return or continuance of any such writ of error, that it shall be lawful for any three of the said justices and barons, at every of the said days and times, to receive writs of error, to award process thereupon, to make and prefix days from time and time of and for the continuance of all such writs of error as shall

27 Eliz. c. 8.

Three justices and barons may receive and continue writs of error, &c.

No. XI. 31 Elizabeth, c. 1.

be there returned, certified or depending. And that the same shall be to these respects as good and available as if all the justices and barons authorized by the same Act were present. And that the justices and barons authorized by the said statute may after that proceed in all those cases, in such sort to all intents, as they may do in other cases mentioned in the said statute; any not coming of any the said justices or barons notwithstanding.

Judgment may be given by six justices and barons.

III. Provided nevertheless, That no judgment shall be given in any such suit or error, unless it be by such full number of the said justices and barons as are in that behalf authorized and appointed by the said Act.

The plaintiff in error may have his writ returnable in Parliament at his election.

IV. Provided also, and be it nevertheless enacted by the authority aforesaid, that the party plaintiff or defendant, against whom any such judgment hath been heretofore or hereafter shall be given in the said Court of King's Bench, may at his election sue in the High Court of Parliament for the reversal of any such judgment as heretofore hath been usual or accustomed; any thing in this statute or in the said former Act to the contrary thereof notwithstanding.

## [ No. XII. ] 3 James I. c. 8.—An Act to avoid unnecessary Delays of Executions.

[See the last Class, p. 317.]

## [ No. XIII. ] 13 Charles II. st. 2. c. 2.—An Act for Prevention of Vexations and Oppressions by Arrests, and of Delays in Suits of Law.

[Inserted at length, Class III. No. 13.]

## [ No. XIV. ] 16 Charles II. c. 2.—An Act for preventing of Abatements of Writs of Error upon Judgments in the Exchequer.

16 Charles II. c. 2.
31 Eliz. c. 1.
31 Ed. 3. st. 1. c. 12.

'WHEREAS by a statute made in the one and thirtieth year of the reign of the late Queen *Elizabeth*, it is enacted, That the not coming of the Lord Chancellor and Lord Treasurer, or either of them, at the day of adjournment, in any suit of error depending by virtue of the statute of the one and thirtieth year of the reign of King *Edward* the Third therein mentioned, concerning error made in the Exchequer, shall not be any discontinuance of any such writ of error; but if both the chief justices of either bench, or any one of the said great officers, the Lord Chancellor or Lord Treasurer, shall come to the Exchequer chamber, and there be present at the day of adjournment in such suit of error, it shall be no discontinuance, but the suit shall proceed in law, to all intents and purposes, as if both the Lord Chancellor and Lord Treasurer had comen and been present at the day and place of adjournment: Which statute doth not provide a remedy, in case the said Lord Chancellor and Lord Treasurer, or either of them, shall not be present at the days and times of the returns of such writs of error, although it be within the same mischief, justice being delayed, and the parties in such cases being put to begin new suits, to their great charges and prejudice, by reason of the absence and not coming of the said great officers:'

The not coming of the Lord Chancellor or Lord Treasurer.

II. Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, That the not coming of the Lord Chancellor and Lord Treasurer, or either of them, at the day of return of any writ of error

to be sued forth by virtue of the said statute made in the said one and thirtieth year of the reign of the said King *Edward* the Third, shall not cause any abatement or discontinuance of any such writ of error: But if both the chief justices of either bench, or either of them, or any one of the said great officers, the Lord Chancellor or Lord Treasurer, shall come to the Exchequer chamber, and there be present at the day of return of any such writ of error, it shall be no abatement or discontinuance, but the suit shall proceed in law, to all intents and purposes, as if both the Lord Chancellor and Lord Treasurer had comen and been present at the day and place of the return of such writ.

No. XIV. 16 Charles II. c. 2.

III. Provided always, That no judgment shall be given in any such suit or writ of error, unless both the Lord Chancellor and the Lord Treasurer shall be present thereat.

## [ No. XV. ] 16 and 17 Charles II. c. 8.—An Act to prevent Arrests of Judgment, and superseding Executions.

[Inserted *ante*, Class VI. No. 13.—The Sections respecting bail in error are inserted in the last Class.]

## [ No. XVI. ] 20 Charles II. c. 4.—An Act for proceeding to Judgment on Writs of Error brought in the Exchequer.

'WHEREAS by a statute made in the sixteenth year of the King's most excellent Majesty, it was enacted, That the not coming of 'the Lord Chancellor and Lord Treasurer, or either of them, at the day 'of the return of any writ of error to be sued forth by virtue of the 'statute made in the one and thirtieth year of the reign of King *Edward* 'the Third, shall not cause any abatement or discontinuance of any such 'writ of error; but if both the chief justices of either bench, or either 'of them, or any one of the said great officers, the Lord Chancellor or 'Lord Treasurer, shall come to the Exchequer chamber, and there be 'present at the day of the return of any such writ of error, it shall be 'no abatement or discontinuance, but the suit shall proceed in law to 'all intents and purposes, as if both the Lord Chancellor and Lord 'Treasurer had come and been present at the day and place of the 'return of any such writ; in which said statute it is provided, That no 'judgment shall be given in such suit or writ of error, unless both the 'Lord Chancellor and Lord Treasurer be present thereat. And whereas 'at this present time there is no Lord Treasurer, and therefore by reason 'of the said proviso no judgment can be had in any writ or writs of 'error, brought and yet depending, or to be brought, to the great 'charges and prejudice of his Majesty's subjects, and delay of justice;' For remedy wherein, be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in Parliament assembled, That judgment shall or may be given in any suit, or writ or writs of error now depending, or hereafter to be brought in the Exchequer, in the presence of the Lord Keeper of the Great Seal of *England*, notwithstanding the vacancy of a Lord Treasurer, in such manner as hath been accustomed when there was present the said two great officers; the said proviso in the said statute, or any thing else therein contained, to the contrary in any wise notwithstanding.

20 Charles II. c. 4.
16 Car. 2. c. 2.
31 Ed. 3. st. 1. c. 12.

Judgment may be given in writs of error in presence of the Lord Keeper, notwithstanding the absence of the Lord Treasurer.

## [ No. XVII. ] 10 and 11 William III. c. 14.—An Act for limiting certain Times, within which Writs of Error shall be brought for the reversing Fines, common Recoveries, and ancient Judgments.

No. XVII. 10 & 11 W. III. c. 14.

'WHEREAS fines and common recoveries are the principal assurances of men's estates, and titles and possessions depend thereon, 'and are protected and secured thereby, and by ancient judgments, 'which nevertheless are reversible at any time without restraint or 'limitation, for any error or defect which happens therein by the 'ignorance or carelessness of clerks, and sometimes by unavoidable 'accidents:' For the remedy whereof, and for the quieting men's titles and possessions under ancient fines and recoveries, and ancient judgments, Be it enacted and ordained by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, That no fine or common recovery, nor any judgment in any real or personal action, shall, from and after the first day of *May*, One thousand six hundred ninety-nine, be reversed or avoided, for any error or defect therein, unless the writ of error or suit for the reversing such fine, recovery or judgment, be commenced, or brought and prosecuted with effect, within twenty years after such fine levied, or such recovery suffered, or judgment signed or entered of record. (1)

No fine or recovery, &c. shall be reversed, unless writ of error be brought in 20 years after fine levied, &c.

II. Provided always, That if any person who is or shall be intituled to any such writ of error as aforesaid, shall, at the time of such title accrued, be within the age of twenty-one years, or covert, *non compos mentis*, imprisoned, or beyond the seas, that then such person, his or her heirs, executors, or administrators, (notwithstanding the said twenty years expired) shall and may bring his, her, or their writ of error, for the reversing any such fine, recovery or judgment, as he, she or they might have done, in case this Act had not been made, so as the same be done within five years after his or her full age, discoverture, coming of sound mind, enlargement out of prison, or returning from beyond the seas, or death, but not afterwards, or otherwise.

Proviso.

## [ No. XVIII. ] 5 George I. c. 13.—An Act for the Amendment of Writs of Error; and for the further preventing the Arresting or Reversing of Judgments after Verdict.

[Inserted *ante*, Class VI. No. 18.]

(1) The writ cannot be brought after 20 years, although the title of the party prosecuting at law did not previously accrue, Lloyd *v.* Vaughan, 2 Str. 1257.

# PART IV

## CLASS XIV.

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### *Miscellaneous Statutes respecting Civil Actions and Proceedings.*

### [ No. I. ] 11 Henry VII. c. 12.—A Mean to help and speed poor Persons in their Suits.

11 Henry VII. c. 12.

'PRAYEN the Commons in this present Parliament assembled, That 'where the King our Sovereign Lord of his most gracious disposi- 'tion, willeth and intendeth indifferent justice to be had and ministered 'according to his common laws, to all his true subjects as well to the 'poor as the rich, which poor subjects be not of ability ne power to 'sue according to the laws of this land for the redress of injuries and 'wrongs to them daily done, as well concerning their persons and their 'inheritance, as other causes:' For remedy whereof, in the behalf of the poor persons of this land, not able to sue for their remedy after the course of the common law; Be it ordained and enacted by your Highness, and by the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, That every poor person or persons, which have, or hereafter shall have cause of action or actions against any person or persons within this realm, shall have, by the discretion of the chancellor of this realm for the time being, writ or writs original, and writs of *subpœna*, according to the nature of their causes, therefore nothing paying to your Highness for the seals of the same, nor to any person for the writing of the same writ and writs to be hereafter sued; and that the said chancellor for the time being shall assign such of the clerks which shall do and use the making and writing of the same writs, to write the same ready to be sealed, and also learned counsel and attornies for the same, without any reward taken therefore: And after the said writ or writs be returned, if it be afore the King in his bench, the justices there shall assign to the same poor person or persons, counsel learned, by their discretions, which shall give their counsels, nothing taking for the same: And likewise the justices shall appoint attorney and attornies for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help, and business in the same: And the same law and order shall be observed and kept of all such suits to be made afore the King's Justices of his common place, and Barons of his Exchequer, and all other justices in the Courts of Record where any such suit shall be.

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### [ No. II. ] 1 Edward VI. c. 7.—The Continuation of Actions after the Death of any King.

1 Edward VI. c. 7.

The death of the King shall not discontinue any suit, &c.

'WHERE the King's subjects heretofore have to their great costs, 'charges and expenses, prosecuted and sued divers and sundry 'actions, as well real and personal, as all other actions mixt or other- 'wise, in the King's Majesty's courts, and other courts of record, not 'only by writs, but also by plaint or bills: which actions, suits, bills 'and plaints, by the death or demise of the kings of this realm have 'been discontinued, and the parties in every such actions, suits, bills

No. II.
1 Edward VI.
c. 7.

'and plaints, thereby have been put without day, whereby the demandants, plaintiffs and actors, in every such action and suit, were compelled and driven by the order of the laws of this realm, for their further remedy, to commence and begin again his or their said actions, suits or plaint, or else to prosecute and sue resummons, attachments, *scire facias*, or such other like process, to revive his or their said actions, suits or plaints; which was not only to their great costs, charges, expenses, hindrances and delay of their causes and suits, but also a great let and hindrance of justice:' For reformation whereof be it ordained, established and enacted by the King our Sovereign Lord and the Lords and Commons in this present Parliament assembled, and by the authority of the same, That from thenceforth by the death or demise of the King's Majesty that now is, (whose life Almighty God long preserve, keep and maintain in his most royal estate) nor by the death or demise of any that hereafter shall be king of this realm, any action, suit, bill or plaint, now or that hereafter shall depend between party and party, in any of the courts aforesaid, shall not in anywise be discontinued or put without day: but that the process, pleas, demurrers and continuances in every action, actions, suits, bills or plaints, which now or that hereafter shall depend, shall stand good and effectual, and be prosecuted and sued forth, in such manner and form, and in the same estate, condition and order, as if the same king had lived or continued in full life, the death or demise hereafter of any king of this realm notwithstanding. And that all and all manner of judicial process, that hereafter shall be had or pursued in the time of the reign of any other king, then reigning at the time of the pursuit of the original or former process, shall be made in the name of the king that for the time shall reign and be king of this realm, and that variance touching the same process between the names of the kings shall not be in any wise material, as concerning any default to be alleged or objected therefore.

The variance between the original and judicial process shall not be prejudicial.

Suits not discontinued by death, new commission, or association, or not coming of justices.

II. And also be it further established and enacted by the authority aforesaid, That all and every assize of *novel disseisin*, assize of *Mortdauncester*, *juris utrim*, and attaint, which at any time hereafter shall be arraigned, commenced or sued before any of the king's justices of assize, shall not from henceforth be discontinued, or put without day, by reason of death, new commission, association or not coming of the same justices of assize, or any of them; but shall stand good and effectual in the law, to all intents, constructions and purposes; the death, new commission, association or not coming of the same justices, or any of them, in any wise notwithstanding

Preferment of the plaintiff to a name of dignity.

III. And over that, be it ordained and enacted by the authority aforesaid, That albeit any demandant or plaintiff in any manner of action, bill or suit, shall fortune to be made or created duke, archbishop, marquess, earl, viscount, baron, bishop, knight, justice of the one bench or of the other, or serjeant at the law, depending the same action, bill or suit, yet that notwithstanding, that no writ, action or suit shall for such cause in anywise be abatable or abated, but shall remain in like force, goodness and strength as the same was before; any law or usage to the contrary in any wise notwithstanding.

Preferment of a justice or commissioner to a name of dignity.

IV. And also be it ordained and enacted by the authority aforesaid, That albeit any person or persons, being justice of assize, justice of gaol delivery, or justice of the peace, within any of the king's dominions, or being in any other of the King's commissions whatsoever, shall fortune to be made or created duke, archbishop, marquess, earl, viscount, baron, bishop, knight, justice of the one bench or of the other, serjeant at law or sheriff, yet that notwithstanding, he and they shall remain justice and commissioner, and have full power and authority to execute the same, in like manner and form as he or they might or ought to have done before the same.

New justices may give judgment of a pri-

V. And be it ordained and enacted by the authority aforesaid, That in all cases where any person or persons heretofore have been, or hereafter shall be, found guilty of any manner of treason, murder, man-

No. II. 1 Edward VI. c. 7.

slaughter, rape, or other felony whatsoever, for the which judgment of death should or may ensue, and shall be reprieved to prison without judgment at that time given against him, her or them so found guilty, that those persons that at any time hereafter shall by the king's letters patents be assigned justices to deliver the gaol where any such person or persons found guilty shall remain, shall have full power and authority to give judgment of death against such person so found guilty and reprieved, as the same justices (before whom such person or persons was or were found guilty) might have done, if their commission of gaol delivery had remained and continued in full force and strength.

soner found guilty of felony and reprieved.

VI. And over that, That no manner of process or suit made, sued or had before any justices of assize, gaol delivery, *oyer* and *terminer*, justices of peace, or other of the King's Commissioners, shall ne in any wise be discontinued by the making and publishing of any new commission or association, or by altering of the names of the justices of assize, gaol delivery, *oyer* and *terminer*, justices of peace, or other the King's Commissioners, but that the new justices of assize, gaol delivery and of the peace, and other commissioners, may proceed in every behalf, as if the old commissions and justices and commissioners had still remained and continued not altered.

No suit before justices shall be discontinued by a new commission.

## [ No. III. ] 29 Charles II. c. 5.—An Act for taking Affidavits in the Country, to be made use of in the Courts of King's Bench, Common Pleas, and Exchequer.

29 Charles II. c. 5.

'FOR the greater ease and benefit of all persons whatsoever in the taking of affidavits to be made use of and read in his Majesty's Courts of King's Bench, Common Pleas, and Exchequer at *Westminster*, as well in matters and things relating to his Majesty, and his revenue, as in all other matters and causes whatsoever depending, or to be depending, in all or any of the courts aforesaid, or any wise concerning the proceedings of or in the same;'

II. Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the Chief Justice, and other the justices of the said Court of King's Bench for the time being, or any two of them, whereof the Chief Justice for the time being to be one for the said court of King's Bench; and the Chief Justice of the Common Pleas, and the rest of the justices there for the time being, or any two of them, whereof the Chief Justice of the same court to be one for the said court of Common Pleas; and also the Lord Treasurer, Chancellor and Barons of the Court of Exchequer for the time being, or any two or more of them, whereof the Lord Treasurer, Chancellor, or Lord Chief Baron for the time being, to be one for the said Court of Exchequer; shall and may, by one or more commission or commissions under the several seals of the said respective courts, from time to time as need shall require, impower what and as many persons as they shall think fit and necessary, in all and every the several shires and counties within the kingdom of *England* and dominion of *Wales*, and town of *Berwick-upon-Tweed*, to take and receive all and every such affidavit and affidavits as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter, or thing depending, or hereafter to be depending, or any wise concerning any of the proceedings to be in the said respective courts, as Masters of Chancery in extraordinary do use to do; and that it shall and may be lawful for any judge of assize in his circuit to take and receive any affidavit or affidavits as any person or persons shall be willing and desirous to make before him, in or concerning any cause, matter, or thing depending, or hereafter to be depending, or in any wise concerning any proceedings to be had in the said Courts of King's Bench, Common Pleas, and Exchequer, or any of them; which said affidavits, taken as aforesaid, shall be filed in their several and respective offices of the said courts the same do concern,

Who may impower persons by commission to take affidavits.

Judges of assize in their circuits may take affidavits concerning matters depending in the King's Bench, Common Pleas, and Exchequer.

**No. III. 29 Charles II. c. 5.**

The penalty on such as forswear themselves in such affidavits. The person taking the same shall receive but 12*d.* besides the King's duty.

and then be read and made use of in the said courts to all intents and purposes, as other affidavits taken in the said courts now are, and that all and every affidavit and affidavits, taken as aforesaid, shall be of the same force as affidavits taken in the said respective courts now are; and all and every person and persons forswearing him, her or themselves in such affidavit or affidavits shall incur and be liable unto the same penalties, as if such affidavit or affidavits had been made and taken in open court.

III. Provided, That for the taking of every such affidavit, the person or persons so impowered and taking the same, shall for so doing receive only the sum or fee of twelvepence, and no more, besides the duty payable to his Majesty for the same; which said duty to his Majesty shall not be paid to the said commissioner, but to the proper officers in the said respective courts, before such affidavit or affidavits be therein filed or made use of.

## [ No. IV. ] 9 and 10 William III. c. 15.—An Act for determining Differences by Arbitration.

9 & 10 Wm. III. c. 15.

'WHEREAS it hath been found by experience, that references made 'by rule of court have contributed much to the ease of the sub'ject, in the determining of controversies, because the parties become 'thereby obliged to submit to the award of the arbitrators, under the 'penalty of imprisonment for their contempt in case they refuse sub'mission;' (1) Now for promoting trade, and rendering the awards of arbitrators the more effectual in all cases, for the final determination of controversies referred to them by merchants and traders, or others, concerning matters of account or trade, or other matters; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by authority of the same, That from and after the eleventh day of *May*, which shall be in the year of our Lord, One thousand six hundred and ninety-eight, it shall and may be lawful for all merchants and traders, and others desiring to end any controversy, suit or quarrel, controversies, suits or quarrels, (2) for which there is no other remedy but by personal action or suit in equity, by arbitration, to agree that their submission (3) of their suit to the award or umpirage of any person or persons should be made a rule of any of his Majesty's Courts of Record, which the parties shall choose, and to insert (4) such submission of the suit to the award of any person, &c.

Merchants and traders, &c., desiring to end controversies by arbitration, may agree their

(1) Before the statute, "when the submission to arbitration was by rule of court, which was often the case, the conduct of the arbitrators and of the parties to the submission might, as it still may be, examined into, and if on examination it appeared that the arbitrators had been partial and unjust, or had mistaken the law, the court would not enforce a performance of the award; 1 Salk. 71, pl. 4.; Anon. ibid. 73, Morris *v.* Reynolds, and Davila *v.* Almanza; ibid. 83, Forster *v.* Brunetti; 1 Mod. 21, Darbyshire *v.* Cannon; 2 Bur. 701, Lucas *v.* Wilson. If, however, the conduct of the arbitrators was not or could not be successfully impeached, the Court of King's Bench, in the reign of Charles II., when Kelynge was Chief Justice, began to compel a performance of the award, by attachment, as for a contempt of a rule of court; 1 Salk. 83, Forster *v.* Brunetti; Sid. 54, Stiles *v.* Triste. It afterwards became a common practice to issue out an attachment for nonperformance of an award; and it was found by experience, as the preamble of the statute recites, that the enforcing of the performance of awards by attachment had contributed much to the ease of the subject."—Wms.'s Note to 1 Saund. 327.

(2) In Lucas *v.* Wilson, 2 Bur. 702, it was held by the Court of B. R. that a submission entered into by rule of the court in a cause there depending, was not within the statute; but that it stood upon the common law, independent of the Act; which was made to put submission to arbitration in cases where there was no cause depending, upon the same foot as those where there was a cause depending. But here was a case depending at the time of the submission, and therefore the case was not within the provision of the Act; Pedley *v.* Westmacott, 3 E. 603.

(3) A case is within the Act, although the agreement be to make the award instead of the submission a rule of court; Soilleux *v.* Herbst, 2 B. and P. 444; —— *v.* Mills, 17 Vesey, 419.

(4) A submission by parol is not within the Act; Ansell *v.* Evans, 7 T. R. 1.

No. IV. 9&10 W. III. c. 15.

their agreement in their submission, or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons,(1) which agreement being so made and inserted in their submission or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered of record in such court, and a rule shall thereupon be(2) made by the said court, that the parties shall submit to, and finally be concluded by the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire, pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court, (3) when he is a suitor or defendant in such court, and the court on motion shall issue process accordingly, which process shall not be stopped or delayed in its execution, by any order, rule, command or process of any other court, either of law or equity, unless it shall be made appear on oath to such court (4) that the

In case of disobedience, party neglecting subject to penalty, &c.

(1) Where the bond contains an agreement that the submission shall be made a rule of court, and the parties by indorsement agree that the time for making the award shall be enlarged; this includes all the terms of the original submission, and consequently the agreement for making it a rule of court; Evans *v.* Thomson, 5 E. 189.

(2) It is competent for either party to revoke, by deed, his submission, at any time before it is actually made a rule of court; Milne *v.* Gratrix, 7 E. 608. The doctrine, that submissions to award shall be subject to revocation, either expressly or by death, marriage, or other contingency, however firmly established, seems to have originated in a false principle, by which they are considered as a mere authority, instead of being regarded as an obligatory contract. It is agreed, that the obligation of a bond is not destroyed by such revocation, which, as long as the penalty was literally enforced, was an adequate security against such revocation; but since the determinations that upon these bonds it is requisite to assign breaches under stat. 8 and 9 Wm. III. c. 11. s. 8. the remedy is in such cases much less efficacious. Where a *feme sole* submitted to arbitration by deed, and an award was made after her marriage, and an action brought against the husband and wife for non-performance, it was objected in arrest of judgment, that the marriage was a revocation; but it was held that such marriage, although a revocation, was itself a breach of the covenant to refer, in respect of which the action might be maintained, and therefore, that upon the whole declaration it appeared that the plaintiff had a good cause of action; Charnley *v.* Winstanley, 1 E. 266.

(3) No attachment can be granted for not paying a sum of money pursuant to an award, without a personal demand, although the time and place of payment are directed by the award; Brandon *v.* Brandon, 1 B. and P. 394. The court of C. P. refused to grant an attachment for non-performance of an award pending an action brought on the award, or to allow the plaintiff to waive the action in order to apply for an attachment; Badley *v.* Lonsday, 1 B. and P. 81.

(4) In Nicholas *v.* Challe, 14 Vesey, 265, Lord Eldon intimated the inclination of his opinion that no bill in equity could be sustained for an injunction against proceeding by attachment upon an award under the statute, and in Gwinett *v.* Bannister, id. 530, expressly decided that the statute does prohibit the jurisdiction of a court of equity. In ——— *v.* Mills, 17 Vesey, the question was agitated, whether the jurisdiction of courts of equity is taken away in case the bill is filed previously to the submission being made a rule of court? but the case was determined upon collateral grounds. In Lord Lonsdale *v.* Littledale, 2 Vesey jun. 451, a bill in equity was sustained where the award was made by a rule of court in a cause pending, and which of course was not a case within the statute; and by Lord Eldon in Nicholas *v.* Challe—"It does not appear even that there was the term imposed upon the party not to file a bill in equity; the effect of which has never been determined in a court of equity; but that case does not afford even that ground of objection, and is therefore no more than a rule of *nisi prius*, by consent given in court, under an order of court, to abide an award. All the subsequent proceedings are nothing more than part of the transaction in the course of a suit at law." And upon mentioning the case a second time, his lordship said—"It has appeared extraordinary to those who have sat here, that courts of law should permit parties by contract upon such a reference to arbitration, to deprive themselves of the benefit which they might receive in equity." I cannot, however, help thinking, that courts of law in such cases proceed upon very adequate grounds; the general object of submission to arbitration being to avoid the expense and protraction of litigation; and all equitable relief being given in such cases by the summary interposition of the authority of the court of law in which the action is depending; and although such agreement may not

No. IV. 9&10 W. III. c. 15.

Corrupt arbitration void, and may be set aside, &c.

arbitrators or umpire misbehaved themselves, and that such award, arbitration or umpirage was procured by corruption, or other undue means.

II. And be it further enacted by the authority aforesaid, That any arbitration or umpirage procured by corruption or undue means, shall be judged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term (1) after such arbitration or umpirage made and published to the

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furnish in the court of equity a defence, by way of plea to the jurisdiction, the resorting to such court, contrary to the agreement, and when there is a full opportunity of obtaining redress, if warranted by the facts, in the original tribunal, may be very justly regarded as a contempt of the court of law, and punished accordingly.

(1) The limitation does not extend to cases referred under orders of *nisi prius;* Anderson *v.* Coxetor, 1 Str. 501; Synge *v.* Jervoise, 8 East, 466; although the statute only mentions corruption or undue practice, the application to set aside an award within the statute, upon any other ground, must be made within the limited time; as where the application was on account of the arbitrator not having had sufficient materials; Zachary *v.* Shepherd, 2 T R. 781. So where the defect appeared on the face of the award; Lowndes *v.* Lowndes, 1 E. 276. In Holland *v.* Brookes, 6 T. R. 161, an application for an attachment for non-performance of an award was resisted on several grounds not appearing on the face of the award, but stated by affidavit, as that the arbitrator had not made his award within the time prescribed, and that the plaintiff had since the submission become a married woman: but the court were of opinion that the party could not object to an award for any defect not apparent on the award itself, in shewing cause against a motion for an attachment, and that he must obtain a rule for that purpose within the time limited by the Act.

This point appears to have been rather hastily decided, and to require farther consideration The making of the award within the limited time is a condition essentially attached to the submission; and it would seem necessary that in an application for an attachment, the compliance with such condition should be distinctly shewn in support of the application, for after the expiration of the term, the attempt to exercise the power of the arbitrator does not appear to be a matter of collateral objection, but a mere nullity. So if the award is made after the submission is legally revoked, as in the case of marriage: and there certainly is nothing in the language of the Act itself to give effect to an award, if not made according to the contract and submission of the parties. At the time of deciding this case, it was not considered as settled that an attachment might be objected to on account of the apparent invalidity of the award, which, in a subsequent case so decided, was stated by Lord Kenyon to be one of the most important questions that had occurred since he had had a seat in the court; Pedley *v.* Goddard, 7 T. R. 73.

In Lucas *v.* Wilson, 2 Bur. 702, Lord Mansfield said, that the court will not enter at all into the merits of the matter referred to arbitration, but only take into consideration such legal objections as appear upon the face of the award, and such objections as go to the conduct of the arbitrators. But Lord Eldon in Gwinett *v.* Bannister, 14 Vesey, 532, (evidently referring to this observation) says that some general *dicta* upon this subject in Burrow are inaccurate. In Knox *v.* Symmonds, 1 Vesey, jun. 369, (which arose upon a reference of a cause in the Court of Chancery), Lord Thurlow said, "A party to an award cannot come to have it set aside upon the simple ground of erroneous judgment in the arbitrator, for to his judgment they refer their disputes; and that would be a ground of setting aside every award. In order to induce the court to interfere, there must be something more, as corruption in the arbitrator, or gross mistake, either apparent upon the face of the award, or to be made out by evidence: but in case of mistake it ought to be made out to the satisfaction of the arbitrator, and the party must convince him that his judgment was influenced by that mistake, and that if it had not happened he should have made a different award." In Morgan *v.* Mather, 2 Vesey, jun. 15, (being also the case of a reference of a cause depending in Chancery) the court, with reference to a question of allowing compound interest, refused to set aside the award, as there might be cases in which such allowance would be proper. Wilson, L. C. said—"It would be a melancholy thing, if, because we differed from the arbitrators in points of fact, we should set aside awards. The only grounds for that are: first, that the arbitrators have awarded what was out of their power: secondly, corruption; or that they have proceeded contrary to the principles of natural justice, though there is no corruption; as, if without reason they will not hear a witness: thirdly, that they have proceeded upon mere mistakes which they themselves admit. I am of opinion that where any thing is submitted to arbitration, the arbitrators cannot award contrary to law, because that is beyond their power; for the parties intend to submit to them only the legal consequences of their transactions and engagements."

In Ching *v.* Ching, 6 Vesey, 282, upon an application to set aside an award, upon the allegation that the arbitrators had made a wrong decision upon a question of law, Lord

parties; any thing in this Act contained to the contrary notwithstanding.

No. IV. 9&10 W. III. c. 15.

## [ No. V. ] 6 Anne, c. 31.—An Act for the better preventing mischiefs that may happen by Fire.

Eldon said—" If a question of law is referred to an arbitrator, he must decide upon it, and though he decide wrong you cannot help it. In a case before Lord Rosslyn, Mr. Mansfield and I endeavoured to open an award on the ground of mistake of the arbitrator, the question referred being as to the vesting of a legacy; but it was held we could not."

In Kent *v.* Elstob, 3 East, 18, (arising on a reference at *nisi prius*) the arbitrator with his award delivered a paper containing reasons for his opinion, which appeared to proceed upon a mistaken view of the law, and the award was set aside, as he meant to determine according to the law, and had mistaken it; and that the reasons assigned should be taken to be the same as if inserted in the award. Ching *v.* Ching was cited; but Lawrence J. said—" The case appeared to be only a short note, and without knowing more of the circumstances of it he could not form any judgment upon the opinion said to have been there delivered, whether they applied or not."

In the subsequent case of Young *v.* Walter, 9 Vesey, 364, a motion being made to prevent the execution of an award on account of a mistake by the arbitrator, Lord Eldon said—" The Court of King's Bench have lately quarrelled with a decision of Lord Rosslyn, followed by me upon this point. I confess I think those decisions right. If there is a question of law, and the parties choose to refer that to the decision of an arbitrator instead of the court, why may not he take all moral considerations into his judgment? If they refer to a person to decide all matters in difference according to law, and he means to decide according to law, and mistakes, the court will set that right. But if a distinct question of law and nothing else is referred, as there was in the case before Lord Rossyln, and the parties choose to say they will not take the decision of the court, but will take whatever an arbitrator shall say is the law between them, why may they not so agree?"

In Chace *v.* Westmore, 13 East, 357, upon a reference of causes depending to a gentleman at the bar, who made his award as well upon the law as the fact, it was moved to set aside the award, on the ground of a mistake in point of law; but though the question of law was raised on the pleadings, it did not appear upon the face of the award, but was brought before the court on affidavit. Upon shewing cause, Lord Ellenborough and the rest of the judges intimated great doubt whether they ought to enter into the merits of the decision. His Lordship observed, that there was a great difference in these cases in considering the object of the reference, and the description of the person to whom the decision was confided by the parties. In ordinary cases, where questions of fact are referred to one who is supposed to be competent to deal with such questions, though not with questions of law, and a question of law happens to arise, in which he disturbs the whole justice of the case, the court would, I think, enter into the inquiry, and correct what was erroneous in the decision. But, when a doubtful question of law arises between parties, it often happens that on that very account they agree to refer the matter to the arbitrament of a gentleman of the profession, meaning to refer the matter of law to him, and to abide by his determination of it. After hearing counsel in support of the rule, his Lordship said, " I fear it is impossible to lay down any general and certain rule upon this subject, in what cases the court will not suffer an award to be opened: it must be subject to some degree of uncertainty, depending upon the circumstances of each case. But it is enough to say, that, in the present case, where the merits in law and in fact were referred to a person competent to decide upon both, we will not open the award, unless it could be shewn to be so notoriously against justice, and his duty as an arbitrator, that we could infer misconduct on his part." The other judges agreed; and Le Blanc J. added, " that where the question of law necessarily arises upon the face of the award, then the court must take notice of it."

In the subsequent case of Campbell *v.* Twemlow, in the Exchequer, 1 Price 81. which arose on a reference at *nisi prius* to the Editor of the present Work, a motion was made to set aside the award, on account of the rejection of a witness as incompetent. A great part of the discussion at the bar related to the question of law upon the point objected to; but the court held that it was unnecessary for them to give any opinion on that question, which they treated as a doubtful one. Thomson C. B. said, " Every thing both of law and in fact must, in this instance, have been referred to the arbitrator. He has adjudged the case, and has decided on not calling this witness. Certainly, there have been many instances, where the courts have refused to interfere, on the ground of a mistake by an arbitrator in point of law. The case of Ching *v.* Ching goes precisely to that point. Here, certainly, it was a question of law, whether the witness was admissible or not. There have been other cases where the arbitrator has prayed the aid of a court, and stated the grounds of his doubts on the face of the award; and there, certainly, the courts have interfered, and given an opinion. In Ives *v.* Medcalfe, 1 Atk. 63. a material document was shewn to one arbitrator only, and the other swore, that if he had seen it he believed he should not have made such an award. There, Lord Hardwicke held that the

No. V.
6 Anne, c. 31.

VI. AND be it further enacted by the authority aforesaid, That no action, suit, or process whatsoever, shall be had, maintained, or prosecuted against any person in whose house or chamber any fire shall, from and after the said first day of *May*, accidentally begin, or

No action to be prosecuted against any person in whose house, &c. any fire accidentally begins, &c.

award was unfairly obtained, and on that ground decreed that it should be set aside; but he agreed to the general rule, that the arbitrators are judges of the parties' own choosing; and that, therefore, they cannot object to the award as an unreasonable judgment, or as a judgment against law."—The other judges concurred in the opinion that the award was conclusive.

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In cases of partnership, and other relations of a permanent nature, it is usual to insert a clause, that any matters of difference which may arise should be determined by arbitration: and in one case, Lord Kenyon, as Master of the Rolls, decided, that such an agreement might be pleaded in bar to a suit in equity; Halfhide *v.* Fenning, 2 Brown C. C. 336; but this is contradicted by the general current of authorities both previous and subsequent. See Mitchell *v.* Harris, 2 Vesey jun. 129: 4 Bro. Ch. 311; Kill *v.* Hollister, 1 Wils. 129; Street *v.* Rigby, 6 Vesey 815.

And in Tattersall *v.* Groote, 2 B. and P. 131, the Court of Common Pleas expressed a strong opinion that no action could be maintained for breach of a contract to submit to arbitration, on the ground of its being nugatory; and that it would be difficult to direct a jury upon what rule to proceed in assessing damages. The case was decided on other grounds, but the opinion in question seems to be very open to further examination; for, in general, if one person covenants absolutely with another for the performance of a given act, an action may be maintained for the non-performance of such act, without shewing any interest in its being performed. The damages would in most cases be merely nominal; but it is easy to imagine a case in which, upon the subject in question, large damages might be made out to the satisfaction of a jury; for instance, if the plaintiff should have obtained the decision of a court in his favour, and should have been put to considerable extra costs. But the difficulty or uncertainty of ascertaining the amount of damages can very seldom be admitted as a bar to the right of action.

But in Waters *v.* Taylor, 15 Vesey 10, (being the well-known case of dispute between the proprietors of the Opera House) upon a motion for a receiver, the Lord Chancellor suggested the absolute necessity that the parties should go to arbitration, and also took the objection that the court does not interfere for the management of a joint concern, except as incidental to the object of the suit, to wind up the concern and divide the profit. In the course of his judgment he made the following observations:—"This is compared to the familiar case of a partnership. There [illegible] of an application for the purpose of putting a manager or receiver upon partnership property, where the court did not pause, from regard to the interest of the parties; putting it to them to consider whether they would, by a proper attention to their own interests, remove the necessity of doing that which, though it must be done when necessary, is at best a ruinous proceeding."—"If that is the usual practice upon partnerships in London, when the parties have not provided, that no such measure shall be adopted, without entering into the consideration how far those parties have conclusively provided another remedy, such an intimation from the court is peculiarly wholesome if the parties have, upon the face of the instrument, demonstrated their conviction that a court of justice should not be hastily resorted to: especially if the nature of the subject is such that a judge, feeling himself bound to determine, must acknowledge that he cannot understand it; and the instruments which must decide upon the rights of the parties betray their consciousness that no judge could understand it."—"The argument with reference to those provisions (the provisions of the particular deed) is, that the court can no more renounce the jurisdiction on account of the ridiculous or frivolous nature of the dispute, than upon the most important point: but my argument is, that the forum they have provided for themselves, and the guard introduced by them against the forum of the country, (whether effectually I do not say) shew their intention against the interference of any other jurisdiction, until they have tried the effect of the special means, provided by themselves; and that course which is familiar in the common case of partnership is more especially to be adopted where the parties have themselves expressed that intention."—"As a general proposition, it is true that an agreement to refer disputes to arbitration will not bind the parties even to submit to arbitration before they come into court. I would not, therefore, say, that the consequence of this provision in the instrument is, that a suit cannot be instituted without adding this qualification; that the court, if bound to administer relief, is fully justified in pausing before it takes, upon an interlocutory motion, a step that is in truth the greatest part of the relief."—"I am so strongly pressed by the consideration that, whatever view the parties themselves may take of the subject, they are calling down upon them an interposition, perhaps not the most ruinous, but that cannot take place without infinite mischief to all who may have any interest in the subject, that I shall give them an opportunity to pause, and consider whether they will press for my determination, or have their disputes determined by that more wholesome mode which they have themselves pro-

any recompence be made by such person for any damage suffered or occasioned thereby; any law, usage, or custom to the contrary notwithstanding: And if any action shall be brought for any thing done in pursuance of this Act, the defendant may plead the general issue, and

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vided; and I recollect very few instances where this sort of recommendation has been given in vain."—"Whatever may be the law of this court as to the capacity of parties, by stipulation, to deprive themselves of the right to resort to a court of justice in the first instance, and taking the law to be, that a man cannot bind himself to forbear to come here, until an arbitration has been had; in almost every line of this deed, upon which the suit is instituted, the parties have expressed the greatest anxiety to keep out of court, if they could in any manner arrange their disputes by arbitration. Accordingly I thought it within the scope of my discretion to give the recommendation that has been given in almost every case where it was proposed to make this court the manager of joint concerns, giving the parties an opportunity of preserving themselves from the ruin that must be the necessary consequence of an active interference of the court."—"In the instance of a partnership, if the parties cannot agree, each excluding the other, that state of circumstances, operating as a dissolution, puts an end to the partnership; and this court then interposes in this way, that it will wind up the concern, and, with that view, will appoint a person to collect and manage until an end can actually be put to the concern. So a manager of a West India estate is appointed, not for the purpose of carrying it on, but to enable the court to give relief when the cause shall be heard."—"The parties have still the *Locus Penitentiæ*, and if they will not settle their own interests, it is immaterial whether the consequences shall be produced by their own act or by mine."

In Carlen *v.* Drury, 1 V. & B. 154., being an application for the appointment of a receiver, in a suit respecting a subscription brewery, Lord Eldon said:—"This court is not to be required on every occasion to take the management of every playhouse and brewhouse in the kingdom: but if the case justifies the interference of the court, it may appoint a manager in the interim for the purpose of winding up the concern."

And in Forman *v.* Homfray, 2 V. and B. 329. on a bill by one partner against another, for an account, Lord Eldon said, he did not recollect an instance of a bill filed by one partner against the other praying an account merely and not a dissolution, proceeding on the foundation that the partnership was to continue. Sir Samuel Romilly admitted that it would be extremely difficult to produce any authority, but said he had a strong impression that he had drawn such bills, observing that the continuance of the partnership is the ground of the jurisdiction in equity, as if the partnership was determined, either party might proceed at law to have the account taken before auditors. The Lord Chancellor observed the inconvenience, that if a partner can come in equity for an account merely, pending the partnership, there seemed to be nothing to prevent his coming annually. And the marginal abstract of the case is, "No relief upon a bill by one partner against another not praying a dissolution."

I have thought it eligible to bring together the preceding citations, as indicating a state of the law with reference to a very important subject, which seems to stand very much in need of legislative interference. A general agreement to submit to arbitration the disputes which may arise between parties forming a permanent connection, is held to be destitute of legal obligation. The resort to a court of justice to settle differences which can only be adequately adjusted by reference or accommodation, is contemplated as necessarily fraught with ruin. A salutary caution is indeed held out to parties acting with fairness and integrity; but a most powerful engine of oppression is placed in the hands of those who are actuated by improper motives; and the law, which in general derives its efficacy and advantage from the power to compel, is reduced to assume the language of recommendation—a language which has its due effect upon professional advisers, but which a fraudulent party is authorized to contemn. A connection is entered into upon mutual engagements for its continuance and upon the duration of which, according to the fair spirit and intention of its original formation, the prosperity and ruin of a party may depend; but that party is disabled from asserting his legal rights with reference to such continuance, and can only have the aid of the law as connected with the object of its dissolution. The inconvenient extent to which the adoption of an opposite course would engross the time and attention of those entrusted with the administration of justice, is manifest and apparent; therefore, the rights and obligations, which in almost every other system of jurisprudence are a most peculiar object of attention, must be left to the mere support of personal confidence and integrity. The existence and magnitude of the evil thus stated are manifest and indisputable. I am not prepared to suggest any particular remedy, by the institution and establishment of any summary mode of jurisdiction; although I have often contemplated the general principle of such an establishment as being calculated, with proper modifications, to produce a beneficial effect and I apprehend that there would be considerable advantage, without any material difficulty, in giving effect to those positive stipulations, which are familiar in their occurrence, and almost essentially necessary in their application.

The most important object of regulation would be, to supply by public authority the

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give this Act in evidence; and in case the plaintiff become nonsuit, or discontinue his action or suit, or if a verdict pass against him, the defendant shall recover treble costs.

[Another section of this in Vol. VIII.]

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refusal to nominate an arbitrator, and to obviate those contrivances which might render an apparent and colourable nomination nugatory, with respect to the producing a due decision of the controversies intended to be submitted to enquiry. I shall not extend this digression by pursuing the subject into its detail: I am, from personal observation and experience, well aware of the difficulties that have resulted from the interference of the legislature in establishing a compulsory system of arbitration between masters and servants, in certain branches of manufacture; but I am far from thinking that the difficulties attached to the nature of the subject are so insuperable, as necessarily to render the suggestion of the principle a matter of fruitless and visionary speculation.

# ADDENDA

TO

## VOLUME III.—PART IV.

## CLASS II.

### *Attornies and other Officers—Prochein Amy.*

**3 George IV. c. 16.—An Act to amend an Act, made in the last Session of Parliament, for amending the several Acts for the regulation of Attornies and Solicitors. [3d *April* 1822.]**

WHEREAS by an Act made in the last Session of Parliament, intituled *An Act to amend the several Acts for the Regulation of Attornies and Solicitors*, it is among other things provided and enacted, that nothing in the said Act contained shall extend or be construed to extend to any person who shall take or shall have taken such degree of Bachelor of Law as in the said Act is contained within eight years after such matriculation as in the said Act is mentioned: And whereas by mistake certain words were omitted in the said proviso and enactment, and it is expedient that the said proviso and enactment should be amended in manner hereinafter mentioned; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, and it is hereby enacted and provided, That nothing in the said Act contained shall extend or be construed to extend to any person who shall take or shall have taken such degree of Bachelor of Law as in the said Act is mentioned, unless such person shall have taken or shall take such last-mentioned degree within eight years after such matriculation as in the said Act is mentioned; and that so much of the said recited Act shall be repealed whereby it is provided and enacted, that nothing in the said Act contained shall extend or be construed to extend to any person who shall take or shall have taken such degree of Bachelor of Law within eight years after such matriculation, and so much of the said recited Act is hereby repealed accordingly.

3 G. IV. c. 16.

1 & 2 G. 4. c. 48.

Recited Act not to extend to persons taking the degree of Bachelor of Law, unless such persons shall have taken such degree within eight years after matriculation.

**3 George IV. c. 69.—An Act to enable the Judges of the several Courts of Record at *Westminster* to make Regulations respecting the Fees of the Officers, Clerks, and Ministers of the said Courts. [22d *July* 1822.]**

WHEREAS it is expedient that some provision should be made for the permanent regulation and establishment of the fees of the officers, clerks, and ministers of justice of the several Courts of Chancery, King's Bench, Common Pleas, Exchequer, and Exchequer Chamber, at

3 G. IV. c. 69.

3 Geo. IV. c. 69.

*Westminster*, and of the clerks and other officers of the Judges of the same Courts; but the same cannot be effectually done without the authority of Parliament: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the Judges of the same Courts respectively for the time being, and they are hereby required, to take into their consideration as well the reports and recommendations made by the commissioners acting in the execution of the several commissions issued under the great seal, in and subsequent to the fifty-fifth year of the reign of his late Majesty relating to the said several officers, clerks, and ministers, as also the rights and duties of such officers, clerks, and ministers, and all other matters relating thereto and connected therewith; and it shall and may be lawful for the Lord Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal together with the Master of the Rolls, and the Vice Chancellor of *England*, or together with either of them, to establish and ordain, by their discretion, tables of fees to be thereafter taken by the several officers, clerks, and ministers of the Court of Chancery, and by the officers of the said Lord Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal, Master of the Rolls, and Vice Chancellor respectively, and for any three or more of the Judges of the said Courts of King's Bench, Common Pleas, Exchequer, and Exchequer Chamber respectively, to establish and ordain, by their discretion, tables of fees, to be thereafter taken by the several officers, clerks, and ministers of the same respective Courts, and by the clerks and other officers of the Judges thereof respectively; which tables of fees shall be entered or inrolled in the public books or records of the Courts to which they respectively relate, in such manner as the persons establishing the same shall think fit.

Chancellor, Judges, &c. may establish tables of fees to be taken by the officers of the respective Courts.

II. And be it further enacted, That the fees so established and ordained, and no other, shall, from and after the establishment and ordaining thereof, and the entry or inrolment of such tables as aforesaid, and after notice thereof given to the officer, clerk, or minister whom they may concern, in such manner as the persons establishing the said tables shall direct, be deemed and taken to be the lawful fees of such officers, clerks, and ministers respectively, and shall and may be demanded, received and taken accordingly: Provided always, that if it shall happen that any duty not provided for in such tables shall, after the establishing and ordaining thereof, be required to be performed by any of the said officers, clerks, or ministers, by or in pursuance of any Act of Parliament or other lawful authority, then and in every such case, and so often as the case shall happen, it shall and may be lawful for the Court whereto, or to some Judge whereof such officer, clerk, or minister shall belong (if the Court shall so think fit), by rule or order of the same Court, to be entered or inrolled as aforesaid, to appoint a reasonable fee or fees to be taken for the performance of such duty; which fee or fees so appointed, and no other, shall be from thenceforth deemed to be the lawful fee or fees for the performance of such duty, and shall and may be demanded, received, and taken accordingly.

Fees so established to be lawful.

Courts to appoint reasonable fees in cases where none are specified.

III. And be it further enacted, That it shall and may be lawful for the persons by whom such tables shall be established as aforesaid, in and by the same tables or otherwise, and for their successors, from time to time, to make such regulations respecting the duties of such officers, clerks, and ministers, as to them shall seem expedient; which regulations shall, from the time of the establishment, ordaining, and inrolling or entering thereof, be in full force, with respect to such officers, clerks, and ministers respectively.

Duties of officers and clerks may be regulated.

IV. Provided always, and be it further enacted, That nothing in this Act contained shall extend to any charges or fees made or received by any solicitor or attorney of the same Courts, or of any of them, in respect of business done by such solicitor or attorney in his character and

Act not to extend to solicitors or attorneys.

profession only of solicitor or attorney, and not as such officer, clerk, or minister as aforesaid.

3 George IV. c. 69.

V. And be it further enacted, that extracts of the tables of the fees so ordained and established as aforesaid shall be kept hung up in some conspicuous part of the office or place of business of the officer, clerk, or minister respectively, whom the same may concern.

Table of fees to be hung up.

VI. And be it further enacted, That in case it shall appear to the persons by whom the said tables shall be established and ordained, or to their successors respectively, that in consequence of the regulations aforesaid, or any of them, compensation ought to be made to any of the officers, clerks, or ministers aforesaid, for any loss which he may sustain by reason thereof, it shall be lawful for the persons by whom the said tables shall be established and ordained as aforesaid, or their successors respectively, and they are hereby required, to report to his Majesty their opinion and recommendation as to such compensation to be made to such officers, clerks, and ministers respectively.

Compensation recommended where loss is sustained.

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# PART IV.—CLASS III.

## *Original Writ—Process—Arrest—Imprisonment—Civil appearance.*

### 3 George IV. c 123.—An Act to amend an Act of the First Year of his present Majesty, for the Relief of insolvent Debtors in *England*. [6th *August* 1822.]

3 G. IV. c. 123.
1 G. 4. c. 119.

WHEREAS an Act passed in the first year of his present Majesty's reign, intituled *An Act for the Relief of Insolvent Debtors in* England, *to continue in force until the First Day of* June *One thousand eight hundred and twenty-five*: and it is expedient to amend the same in the manner hereinafter mentioned; be it therefore enacted and declared, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the provisional assignee of the Court for relief of insolvent debtors, to take possession himself, or by means of a messenger of the said Court, or other person or persons appointed by him, of all the real and personal estate and effects of every such prisoner as shall subscribe such petition, and execute such conveyance and assignment, as in the said recited Act mentioned; and, if the said Court shall so order, to sell or otherwise dispose of such goods, chattels, and personal estate, or any part thereof, and, if the Court shall so order, of the real estate of such prisoner, according to the provisions of the said recited Act, for the purposes of the said recited Act, and out of the proceeds of such real or personal estate to defray, in the first place, all such costs and expenses of taking possession of or seizing and selling the same, as shall be allowed by the said Court, and account for the produce thereof to the said Court; and all and every the real or personal estate, money and effects, vested in or possessed by such provisional assignee by virtue of the said recited Act or this Act, shall not remain in him, if he shall resign or be removed from his office, or in his heirs, executors, or administrators, in case of his death, but shall, in every such case, go to and be vested in his successor in office.

Provisional assignee to take possession of estate, &c. conveyed to him; and out of the proceeds to pay the expences of taking possession.

All property vested in him shall go to his successor.

II. And be it further enacted, That it shall be lawful for the provisional assignee to sue in his own name, if the said Court shall so order, for the recovery, obtaining, and enforcing of any estate, debts, effects,

Provisional assignee to sue in his own name.

3 George IV. c. 128.

or rights of any such prisoner; and in case of the dismission of the petition of any such prisoner praying for his discharge, which the said Court is hereby empowered to dismiss, whenever it shall seem fit, all the Acts done before such dismission by the said provisional assignee, or other persons acting under his authority, according to the order of the said Court, shall be good and valid,

All his acts done before dismissal of petition shall be valid.

Court may appoint an assignee at any time after filing petition.

III. And whereas it is enacted by the said recited Act, that when the said Court shall adjudge any prisoner to be entitled to his discharge, such Court shall appoint a proper person or persons to be assignee or assignees of the estate and effects of such prisoner, for the purposes of the said recited Act; it is hereby further declared and enacted, That it shall and may be lawful for the said Court, as often as it shall see cause, for the better preserving and securing the property of any prisoner, to appoint at any time after the filing of such prisoner's petition, and before the said Court shall adjudge him entitled to his discharge, as well as after such adjudication, one or more assignee or assignees of the estate and effects of such prisoner, for the purposes aforesaid; and when such last-mentioned assignee or assignees shall have signified to the said Court his or their acceptance of the last-mentioned appointment, every such prisoner's estate, effects, rights, and powers vested in such provisional assignee as aforesaid, shall immediately be assigned by such provisional assignee to such last-mentioned assignee or assignees, in trust for the benefit of such last-mentioned assignee or assignees and the rest of the creditors of every such prisoner, in respect of or in proportion to their respective debts, according to the provisions of the said recited Act; and the assignee or assignees of every such prisoner, at any time appointed, shall be and is and are hereby empowered to use and exercise all the powers, authorities, rights, and duties, and shall be subject to all the duties, liabilities, and punishments, given or ordained by this or the said recited Act with respect to the provisional or other assignee or assignees of any prisoner; and in all cases after assignment by the provisional assignee, all the estate and effects of every such prisoner shall be, to all intents and purposes, as effectually and legally vested by relation in all and every such assignee or assignees, as if the first assignment had been made by such prisoner to him or them; but no act done under or by virtue of such first assignment shall be thereby rendered void or defeated, but shall remain as valid as if no such relation had taken place.

Power to all assignees to exercise the powers given to provisional assignee.

Assignment to assignees to vest by relation from time of first assignment.

Enabling Court to charge assignees with interest at a rate not exceeding 20*l.* per cent. for using the money belonging to the insolvent's estate.

IV. And be it further enacted, That from and after the passing of this Act, in all cases in which any assignee or assignees of any insolvent's estates shall wilfully retain in his or their hands, or otherwise employ for his or their own benefit, any sum or sums of money part of the estates of such insolvent, the said Court shall have full power and authority to order such assignee or assignees to be charged in his or their accounts with the estates of such insolvents with such sum or sums of money as shall be equal to the amount of interest computed at a rate not exceeding twenty pounds *per centum per annum*, on all sums of money appearing to the said Court to be so retained or employed by him or them, for the time or times during which he or they shall have so retained or employed the same; and the said Court shall in pursuance of such order charge such assignee or assignees in their accounts with such sum or sums of money accordingly.

The Court shall have power to examine debts, whether stated admitted or disputed in the schedule.

V. And be it further enacted, That the said Court, or the Justices acting under the authority of the said recited Act, shall have the same power to examine into all debts in the prisoner's schedule, whether the same shall be therein stated to be admitted or disputed, or to be admitted in part and disputed in part, as is enacted by the said recited Act as to the debts stated to be admitted therein; and shall also have power to inquire whether any of such debts have been improperly admitted or improperly disputed by the prisoner with any fraudulent intent.

Directing to refer to sche-

VI. And be it further enacted, That in the adjudication of the said

Court, that any prisoner is entitled to the benefit of the said Act, and the order thereon, it shall not be necessary to specify the several creditors and persons claiming to be creditors of such prisoner, as required by the said recited Act, but it shall be sufficient, if the said Court shall think fit, to refer in such order to the schedule of such prisoner as specifying such creditors, or persons claiming to be creditors of such prisoner, as to whom the said Court shall adjudge the said prisoner to be entitled to the benefit and protection of the Act, and to be discharged forthwith; and that in all cases where it shall appear to the said Court that any prisoner shall have done or committed any act for which the said Court is by the said recited Act authorized to order that such prisoner shall not be discharged out of custody by virtue of the said recited Act, or receive or be entitled to any protection, until he or she shall have been in custody at the suit of some one or more of the persons who were creditors at the time of petitioning the said Court, or had since become creditors in respect of debts then growing due, and from whose claims he or she shall be discharged by the judgment of the said Court, for a period or periods not exceeding three years in the whole, the said Court may adjudicate thereon in the words of the said recited Act, without naming any such one or more creditor or creditors in such adjudication; and thereupon the said insolvent shall under such adjudication be subject and liable to be detained in prison by his or her then detaining creditor or creditors, and to be arrested or charged in custody by any of the other creditors in his or her schedule, until he or she shall have been in custody for such period or periods in the whole as shall be specified in such adjudication.

dule as to creditors instead of specifying them in adjudication, and to enable the Court to adjudicate generally without naming particular creditors, &c.

VII. And be it further enacted, That where it shall have been referred to an officer of the said Court, or to any examiner appointed by justices of the peace, by virtue of the said recited Act, to investigate the accounts of any prisoner, and to examine into the truth of the schedule of such prisoner, or the matters thereof, it shall be lawful for the said Court, if it shall see cause, to order all the fees and expenses thereof, paid by any creditor or creditors, to be repaid to him or them out of the first money received by the provisional or other assignee or assignees of such prisoner, from or by his estate or effects; and when it shall have been so referred to any officer or examiner, it shall be lawful for such officer or examiner to order the attendance of such prisoner, or of any prisoner who shall be a material or necessary witness in any matters so referred to such officer or examiner, as often as such officer or examiner shall think fit; and the prisoner mentioned in such order shall be accordingly carried before such officer or examiner, for which such order shall be a sufficient warrant; and the keeper of the prison or his deputy, so carrying any prisoner before such officer or examiner, shall receive for the same the sum of ten shillings and no more, to be paid by the person or persons at whose requisition the said reference shall have been had, and such officer or examiner shall and may, under such reference, administer oaths, and accept the solemn affirmation of any person being a Quaker, and examine all witnesses and parties upon their oaths or affirmations touching all matters relating thereto; and if any prisoner or other person taking an oath, or making any such affirmation, under the provisions of this Act, shall wilfully forswear and perjure himself or herself in any oath to be taken under this Act, or shall make any wilful false affirmation, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury: Provided always, that no keeper of any prison shall be required or compelled to carry any prisoner a greater distance than two miles from his prison, to or before such officer or examiner; except that the keepers of prisons in *Middlesex* or *London*, and of the prisons of the *King's Bench* and *Marshalsea*, and in *Horsemonger Lane*, and of and in the borough of *Southwark* in the county of *Surrey*, shall carry their prisoners before such officer at the office of the said Court, or at such other place within the bills of mortality as the said Court shall direct.

The Court may order expenses of reference to be paid out of the first proceeds.

Prisoner to attend if required in matters of reference.

Fee to keeper.

False swearing perjury.

Limitation as to distance in conveying prisoners.

3 George IV. c. 123.

Court may order prisoners to be confined within the walls.

VIII. And be it further enacted, That in all cases in which the said Court shall order any prisoner to be discharged from custody, so soon as such prisoner shall have been in custody during a certain period, or not to be discharged until he shall have been in custody during a certain period, according to the provisions and limitations in the said recited Act, the said Court may, if it shall see cause, order such prisoner to be confined during any such period within the walls of such prison, and not within any rules or liberties thereof.

The sessions empowered to remand a prisoner who refuses to be sworn, or to answer proper questions, &c.

IX. And be it further enacted, That it shall be lawful to the justices at their general or quarter or adjourned sessions, to remand to prison any prisoner brought before them, who shall refuse to be sworn, or to answer upon oath all such questions as to the said justices shall appear relevant and proper, or for the purpose of amending his schedule, or for further examination or hearing, and to order him to be brought before them at the same or some subsequent general or quarter or adjourned sessions; and such order shall be a sufficient warrant to the keeper of the prison wherein he shall be in custody, to bring him before the same or such subsequent sessions, according to the direction thereof; and that the said justices at session shall certify to the said Court the said remand, with the cause thereof; and that the said justices shall have such and the same powers of compelling the attendance of witnesses, and of requiring and compelling the production of books, papers, and writings, for the purposes of the said recited Act or this Act, as now are possessed by any of the superior courts at *Westminster*; and the clerk of the peace, who is hereby authorized to issue such subpœnas as may be requisite, and in each of which the names of not more than four persons shall be inserted, for each subpœna, receive from the person requiring the same the sum of two shillings and six pence, and no more: Provided always, that nothing herein contained shall extend to the compelling of the attendance of any witness, unless the party on whose behalf such witness shall be required to attend, shall have previously tendered such allowance for expenses for his attendance, as in the judgment of the said Court or of the said justices, at the general or quarter or adjourned sessions, shall appear to be reasonable.

To compel the attendance of witnesses and production of papers.

Expenses to be previously tendered.

In case of collusive arrest in Middlesex, London, or Surrey, of prisoner residing in another county, affidavits may be used in opposition.

X. And be it further enacted, That where it shall appear to the satisfaction of the said Court, that any prisoner in actual custody, or arrested within the counties of *Middlesex* or *Surrey*, or the city of *London*, had, at or immediately before such arrest, his usual place of abode in some other county or place, and had been arrested in the said counties of *Middlesex* or *Surrey*, or in the said city of *London*, it shall and may be lawful for the said Court to receive affidavits of any creditor or creditors, or of any other person or persons not resident within the said counties of *Middlesex* and *Surrey*, or the city of *London*, in opposition to the discharge of such prisoner under the said recited Act, and, if the said Court shall think fit, to permit interrogatories to be filed, for the examination or cross-examination of any person making or joining in such affidavit, and also to stay the discharge of every such prisoner, until such interrogatories shall be fully answered, to the satisfaction of the said Court, or until the expiration of six weeks from the filing of such interrogatories.

No prisoner shall be discharged as to any action for any debt admitted in his schedule, &c. for want of the plaintiff proceeding therein.

XI. And be it further enacted, That no prisoner who shall have petitioned the said Court for relief under and by virtue of the said recited Act, shall be discharged out of custody as to any action, suit, or process in or by which he or she shall be charged or detained in custody, for any debt or damages which are or shall be admitted by such prisoner in his or her schedule filed in the said Court under the said recited Act, or which shall be disputed therein only as to the amount of such debt or damages, by or by virtue of any supersedeas, judgment of nonpros, or judgment as in the case of a nonsuit, for want of the plaintiff or plaintiffs in such action, suit, or process proceeding therein.

Petitions from married women petitioning to be

XII. And whereas by the provisions in the said Act any prisoner petitioning for the benefit of the said Act must execute a conveyance and assignment of all the estate, right, title, interest, and trust of such pri-

sioner to all the real and personal estate and effects of such prisoner (except as therein excepted,) so as to vest all such real and personal estate and effects in the provisional assignee of the said Court, and the said Court is empowered to order a judgment to be entered up against such prisoner in one of *superior courts at *Westminster* for the amount of the debts of such prisoner which shall at the time of such order remain due and unpaid, from which such prisoner shall be discharged by the said Court; and such prisoner is required to execute a warrant of attorney to authorize the entering up such judgment. And whereas a married woman being a prisoner for debt cannot execute such conveyance or assignment, or such warrant of attorney for the purposes aforesaid, and therefore cannot petition for and obtain a discharge under the said Act, without special provision being made for such purposes; be it therefore enacted, That if any married woman being a prisoner within the intent and meaning of the said Act, shall petition to be discharged from any debt or debts under the provisions of the said Act, it shall be lawful for the said Court to receive such petition without requiring such married woman to execute such conveyance or assignment, or such warrant as aforesaid, according to the provisions of the said Act; but instead thereof, that the said Court shall require such married woman to execute a conveyance and assignment for vesting in such provisional assignee as aforesaid, all property, real and personal, to which she may be entitled for her separate use, or over which she shall have any power of disposition notwithstanding her coverture, or which shall be vested in any trustees or trustee or other persons or person for her benefit, and to deliver up all personal estate and effects of which she shall have the actual possession, except her wearing apparel, bedding, and other such necessaries, not exceeding in the whole the sum of twenty pounds; and also all other real and personal estate and effects to which she shall be entitled in any manner whatsoever, in possession, remainder, or reversion, subject only to such right, title, or interest as her husband may have therein; all which acts she is hereby empowered to do without her husband, notwithstanding her coverture, so nevertheless as not to prejudice any rights of her husband in such real and personal estate and effects respectively; and all such estate and effects, real and personal, in possession, reversion, or remainder, shall, by such conveyance and assignment so to be executed under the order of the said Court, be as effectually vested in such provisional assignee as aforesaid, as the same might have been vested in such assignee by the conveyance or assignment of such woman if she had been sole and unmarried, subject only to the rights of her husband therein as aforesaid; and all provisions in the said Act or in this Act contained, touching the real and personal estate of any prisoner seeking to be discharged under the authority of the said Act, shall apply to such real and personal estate and effects respectively, in the same manner as the same would apply to such personal estate and effects if such woman had been sole and unmarried, subject only to the rights of her husband therein; and such married woman shall also execute a warrant of attorney to confess judgment in one of the superior Courts aforesaid, for the amount of the debts remaining unpaid, from which she shall be discharged under the authority of the said Act as aforesaid; and such warrant of attorney so executed shall be sufficient authority for entering up judgment against such woman accordingly, notwithstanding her coverture; but such judgment shall not in any manner prejudice or affect the rights of her husband, except that the same shall be deemed and taken to be her debt in case she shall die in the life-time of such husband, to the end that the same may be discharged out of her personal assets in a due course of administration, or out of her real estate, if any she shall have at the time of her death, but without prejudice to any estate or interest of her husband therein as tenant by the curtesy; and in case such woman shall, during the life-time of her husband, become entitled to any property for her separate use, such judgment may be enforced against such separate property, by suit in equity, or otherwise, under the order of

3 George IV. c. 123.

discharged from debt may be received by the Court without requiring the conveyance required by the recited Act; but conveyance for vesting property shall be made to provisional assignee, &c.

* *Sic.*

the said Court, for the purpose of obtaining payment of so much of the debts from which such woman shall have been discharged by such Court as shall then remain unpaid; and in case such woman shall survive her said husband, such judgment may be after his death enforced against such woman or her property, real and personal, in such and the same manner and with the same effect as it might have been if she had been sole and unmarried at the time she executed such warrant to confess judgment, and at the time when such judgment shall have been entered up as aforesaid: Provided always nevertheless, that the discharge of any married woman under the authority of the said Act or of this Act, shall not operate to discharge her husband from any debt from which his wife shall be so discharged, but such debt, so far as the same shall remain unpaid or unsatisfied, shall be chargeable upon and in force against such husband, as fully, to all intents and purposes, as if his wife had not obtained such discharge.

Prisoners obtaining discharge shall be discharged against any creditor for any sum payable at a future time.

XIII. And be it further enacted, That any prisoner who shall have been or shall be declared entitled to the benefit of the said recited Act, and who shall have obtained or shall obtain a discharge under the said Act, shall be discharged against every creditor for any sum of money payable at any future time or times, who shall under the said recited Act have become entitled to a dividend of the estate of such prisoner in respect to any debt or claim so growing due and payable, and which shall not be due or payable at or before the time of such prisoner obtaining his or her discharge, in like manner, to all intents and purposes, as if such debt or claim were payable presently and not at a future day.

Court may cause insolvent to be apprehended and remanded when he refuses to appear.

Sessions authorized to rehear if Court so directs.

XIV. And whereas by the said recited Act the said Court is authorized in certain cases, upon the application of any creditor of a prisoner, to direct such prisoner after his discharge to be brought again before them, and upon due notice to be given by such creditor, to rehear the matter, and make such further order as to them shall seem fit, in execution of the powers in the said recited Act contained; be it further enacted, That where in any such case the insolvent after his discharge shall refuse or neglect to appear before the said Court, or before the justices at their general or quarter or adjourned sessions, when the said Court shall direct the matter to be reheard before such justices, who are thereby authorized to rehear the same, and to make such further order as to them shall seem fit, in execution of the powers in the said recited Act contained, on the day and at the time specified in any rule of the said Court, a copy whereof shall have been duly served on such insolvent, it shall and may be lawful for the said Court to order the said insolvent to be apprehended and remanded into custody, in such prison as the said Court shall direct, and to issue their warrant accordingly, and to cause him to be brought up for examination as often as to the said Court or to the said justices shall seem fit.

Court may rehear and revise their adjudication and order where insolvent has been remanded for a period.

XV. And be it further enacted, That if any prisoner shall have been adjudged and ordered by the Court to be discharged from custody after a certain period, or not to be discharged out of custody, or receive or be entitled to any protection under the said recited Act, until he shall have been in custody at the suit of certain creditor or creditors in such order named, for a certain period therein mentioned, and the said Court shall see good and sufficient cause to believe that such adjudication or order has been obtained on false evidence, or otherwise fraudulently obtained or improperly made, it shall and may be lawful for the said Court to direct such prisoner to be brought again before them, and upon due notice to be given to the creditor or creditors named in the said order, to rehear the said matter, and set aside the said adjudication and order, if they shall see cause, and to make such further order as to them shall seem fit, in execution of the powers in the said recited Act contained.

An attorney or agent removed from the files of the Court and practising shall be guilty of a contempt.

XVI. And be it further enacted, That in case any person having been admitted on the files of the said Court, to practise therein as an attorney or agent on the behalf of any prisoner in actual custody, shall be by the said Court removed from the said files of the said Court, and

shall after such removal practise in the said Court as an attorney or agent, on behalf of any prisoner in actual custody, he shall be deemed and taken to be guilty of a contempt of the said Court, and shall be liable to fine as well as imprisonment for the same, as shall every attorney and agent, not admitted on the files of the said Court, who shall practise contrary to the provisions of the said recited Act or of this Act.

Before whom affidavits are to be sworn.

XVII. And be it further enacted, That all affidavits to be used before the said Court, or any commissioner thereof, or any justices of the peace, or any officer of the said Court, to whom a reference shall be made by the said Court, or any examiner appointed under the said recited Act, shall and may be sworn before the said Court, or any commissioner thereof, or any commissioner appointed by the said Court for the purpose of taking affidavits, or any master extraordinary in Chancery or commissioner for taking affidavits in any of the superior Courts of *Westminster Hall*, or in *Scotland* or *Ireland*, before a magistrate of the county, division, city, town, or place, where the affidavit shall be sworn.

All estates, &c. of insane persons vested on their discharge in provisional or other assignees.

XVIII. And be it further enacted, That in every case where a prisoner shall be or become of unsound mind, and proceedings shall be had under the said recited Act for the discharge of such prisoner by the said Court, all and every estate, right, title, interest in law and equity, real and personal, power, benefit, and emolument whatsoever, which if such prisoner were of sound mind could or ought to be assigned by such prisoner, pursuant to the provisions of the said recited Act or this Act, shall by force and virtue of the order for the discharge of such prisoner be vested in the provisional assignee of the said Court, or in other assignee or assignees appointed by the said Court, and named in the said order, as fully and effectually, and in the same manner, and with all and every the same consequences and effects, both in fact and law, to all intents and purposes whatsoever, as if such prisoner had been of sound mind, and had duly conveyed the same to such provisional assignee at the time and in the manner in the said recited Act provided; and every assignment hitherto made in such case by the said Court is and shall be good and effectual to all intents and purposes; and that it shall be lawful for the said Court to order judgment to be entered up against such prisoner, in the same manner as if he or she had been of sound mind, and had executed a warrant of attorney to authorize the entering up of such judgment, in the manner by the said recited Act provided.

Assignments hitherto made shall be good. Court may order judgment to be entered up.

After assignment avoided by commission of bankrupt, no action to be brought, &c.

XIX. And be it further enacted, That when any assignment shall be avoided by a commission of bankrupt being issued against any prisoner, no action or suit shall be commenced for any thing done under or by virtue of the said assignment, except to recover any property, estate, money, or effects of the said bankrupt, detained after demand thereof.

Court may invest unclaimed money, and apply the profits towards expenses of the Court.

XX. And whereas it may happen that money may remain in the said Court, produced by the estate and effects of insolvent debtors who have taken the benefit of the said recited Act, or some other Act for the relief of insolvent debtors, which has not been, or may not be claimed by the assignees or creditors of such insolvent; be it further enacted, That it shall and may be lawful for the said Court to cause the same, or any part thereof, to be invested in Government securities, and to apply the interest and profit arising therefrom, towards defraying the expenses of the said Court: Provided always, that no such money shall be so invested, until the same shall have been in the hands of the said Court for twelve months at the least.

After the Court is built in Portugal Street, all matters to be heard there, &c.

XXI. And whereas it is intended to erect a building for the said Court in or near to *Portugal Street*, *Lincoln's Inn Fields*, which will be at a convenient distance from the several prisons in *London* and *Middlesex*, and from the prisons of the *King's Bench*, *Marshalsea*, *Horsemonger Lane*, and of the borough of *Southwark*, in the county of *Surrey*; be it further enacted, That from and after the same Court shall be erected, and ready for the dispatch of business therein, all petitions and other proceedings and matters of all persons confined in the said prisons, shall be heard and determined therein, unless the said Court shall at any time see cause to adjourn its sittings to any other place, and shall adjourn

3 George IV. c. 123.

Fee to keepers, 3s. from each prisoner.

accordingly, which it is hereby empowered to do; and that the said keepers of the said several prisons, or their deputies, shall be entitled to receive the sum of three shillings and no more from each prisoner, for carrying him before the said Court, on the hearing of the matter of his petition and schedule.

In all rules, &c. it shall be sufficient to set out the substance, without setting out the other proceedings.

XXII. And be it further enacted, That in all rules, orders, warrants, and other proceedings of the said Court, under the said recited Act or this Act, or any Act for the relief of insolvent debtors, it shall be sufficient to set forth such rule, order, or warrant, or in case of a warrant for the apprehension or detention of any person, for a contempt in disobeying any order or rule of the said Court, or for the apprehension or detention of any person for the appearance of such person before the said Court, or for the enforcing any rule or order of the said Court, it shall be sufficient to set forth such rule or order, and the warrant thereon, and that the insolvent in any order, rule, warrant, or other proceeding mentioned, has been duly discharged under the said recited Act or this Act, or some other Act for the relief of insolvent debtors, if he has been discharged, or if he has not been discharged, that the prisoner has applied by petition to the said Court for his or her discharge from confinement, according to the provisions of the said Acts, without setting forth in any such order, rule, warrant, or other proceeding, the petition, conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or the schedule, balance sheet, order for hearing, adjudication, order for discharge, or any other rule, order, or proceeding of or in the said Court, or any part thereof, except as aforesaid.

Court to regulate its sittings within certain periods.

XXIII. And be it further enacted, That from and after the expiration of six weeks from the last day of *Trinity* term until the first day of *November* in every year during the continuance of the said recited Act and this Act, the said Court shall have full power and authority to regulate and appoint the sittings of the said Court at such times as to the commissioners of the said Court shall appear fit and necessary for the due administration of justice in the said Court; any thing in the said recited Act to the contrary thereof in anywise notwithstanding: Provided always, that no adjournment of the said Court shall be at any time for more than six weeks.

In indictments, &c. for omitting, &c. property from schedule, or aiding therein, it shall be sufficient to set out the substance of the offence charged.

XXIV. And be it further enacted, That in every information or indictment against any person, for having, with intent to defraud his creditors, wilfully and fraudulently omitted in his schedule, as finally amended and filed in the said Court, at the time of the order for his discharge from actual custody, any effects or property whatsoever, or retained or excepted out of the schedule, as wearing apparel, bedding, working tools, and implements, and other necessaries, more in value than twenty pounds, or against any person for aiding and assisting him to do the same, it shall be sufficient to set forth the substance of the offence charged on the defendant, without setting forth the petition, or conveyance or assignment to the provisional assignee, appointment of assignee or assignees, or any assignment whatever, or balance sheet, order for hearing, adjudication, order for discharge or remand, or any warrant, rule, order, or proceeding of or in the said Court, except so much of his schedule as may be necessary for that purpose.

# PART IV.—CLASS IX.

## *Juries and Trials.*

### 3 George IV. c. 10.—An Act to enable, in certain Cases, the Opening and Reading of Commissions under which the Judges sit upon the Circuits, after the Day appointed for holding Assizes. [15th *March* 1822.]

WHEREAS it has been deemed necessary that the commissions under which the Judges sit upon their circuits, or some of them, should be opened and read at the respective places appointed in pursuance thereof for holding the assizes, in the presence of one at least of the quorum commissioners therein named, on the very day appointed for holding such assizes; whereby much inconvenience has arisen, and may hereafter arise, in case of a pressure of business at other places, or from other unforeseen circumstances: For remedy thereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That whenever it shall so happen that such commissions shall not be opened and read in the presence of one of the quorum commissioners, at any place specified for holding the assizes, on the very day appointed for such purpose, it shall and may be lawful to open and read the same, in the presence of one of the quorum commissioners therein named, on the following day, or if such following day shall be a *Sunday*, or any other day of public rest, then on the succeeding day: and such opening and reading thereof shall be as effectual, to all intents and purposes, as if the same had been opened and read in the presence of one of the quorum commissioners on the very day appointed for that purpose, and shall be deemed and taken to be an opening and reading thereof on the day for that purpose appointed; and all records and other proceedings under or relating to any commission which may be opened and read by virtue of this Act, shall and may be drawn up, entered, and made out under the same date, and in the same form, in all respects, as if such commission had been opened and read on the day originally appointed for that purpose: Provided always, that the Judges and quorum commissioners are hereby directed and required to have such commissions opened and read on the very days appointed for that purpose, unless the same shall be prevented by the pressure of business elsewhere, or by some unforeseen cause or accident.

When commissions shall not be opened and read at any place specified on the day named therein, the same may be opened and read the following day, not being Sunday, &c.

But commissions shall be opened and read on the days appointed, if not prevented.

II. And be it further enacted, That in every case in which it shall happen that any such commission shall be opened and read under the provisions of and according to this Act, the quorum commissioner, before whom the same shall be so opened and read, shall, under his hand and seal, certify to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the time being, that the said commission was so opened, and the cause of the delay of opening and reading the same; which certificate shall be enrolled in the High Court of Chancery.

Where commissions shall be opened under this Act, the cause of delay shall be certified to the Lord Chancellor, &c.

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### 3 Geo. IV. c. 87.—An Act to enable His Majesty's Court of Exchequer to sit, and the Lord Chief Baron or any other Baron of the said Court to try *Middlesex*

3 George IV. c. 87.

## Issues, elsewhere than in the Place where the Court of Exchequer is commonly kept in the County of *Middlesex*. [26th *July* 1822.]

WHEREAS the Court of Exchequer is about to be rebuilt, and it is necessary that provision should be made to enable the said Court of Exchequer to be held, and the Chief Baron of the same Court to sit, elsewhere than in the place where the Court has been commonly kept in the county of *Middlesex*, during the period of the rebuilding of the said Court: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for the Lord Chief Baron of his Majesty's Court of Exchequer, and in his absence for any two or more of the other Barons of the same Court, without any other authority than this Act, from time to time during the rebuilding his said Majesty's Court of Exchequer and until a new Court shall be made fit and ready for the dispatch of business, to order and direct that his Majesty's Court of Exchequer shall be held in any convenient place within the county of *Middlesex*, specified in any such order, for the dispatch of any business of or in the said Court; and that it shall be lawful for the Lord Chief Baron of the same Court, or any other Baron sitting for him, to try all issues joined or to be joined in the same Court, wherein the trials ought to be in the city of *Westminster*, or in the said county of *Middlesex*, in the place specified in any such order as aforesaid, and that all business of or in the said Court may in every such case be heard, decided, and dispatched, and all such issues may be tried, wherever the said Court shall be so directed to be held, in like manner and form, and shall be of the like force and effect, as if the said Court had been held during such periods in the place where the Court of Exchequer has been commonly kept in the said county of *Middlesex*.

While the new Court of Exchequer is building, the Chief Baron, &c. may order the Court to sit in any convenient place in Middlesex, for the dispatch of business.

II. And be it further enacted, That as well the sheriff of the said county of *Middlesex* as all other officers whatsoever, and also all jurors parties, witnesses, or other persons who may be required to attend, or who ought to attend at or for the dispatch of any business whatsoever of or in the said court, or for the trial of any such issue to be so tried as aforesaid, if the same had been heard, dispatched, or tried in the place where the said Court of Exchequer is commonly kept in the said county of *Middlesex*, shall give his and their attendance at and for the trial thereof at the place where the said Lord Chief Baron, or in his absence any other Baron of the said Court, shall be sitting for the trial thereof, upon reasonable notice to him or them in that behalf, and shall be subject to such and the same pains and penalties for non-attendance, and entitled to such and the same fees and remuneration for his and their attendance, as if such business had been heard or dispatched, or such issue had been actually tried, in the usual place where the said Court of Exchequer hath been commonly kept as aforesaid; and that all writs, process, notices, and other proceedings (other than and except a special notice of the place of trial) heretofore issued, made, or had, or to be hereafter issued, made, or had, in any such business, or for the trial of any such issue according to the forms now in use, shall be as good and available in the law, to all intents and purposes, as if such business or such issue had been actually heard, dispatched, or tried in such usual place as aforesaid; and that all business and trials dispatched and heard at any such place as aforesaid, in virtue of this Act, shall be deemed and taken to have been had, and may in any record, process, or other proceeding, and also in any indictment for perjury or other offence committed at or in relation to any such trial, be alleged and laid to have been had in the usual place where the said Court of Exchequer hath been commonly kept, in all respects and to all purposes as if such business and trial had been there actually dispatched and had.

Sheriff, &c. jurors, parties, and witnesses, shall attend at the place so appointed on notice being given.

Subject to penalties for non-attendance, &c.

Proceedings valid.

# PART IV—CLASS XII.

## *Judgment—Execution—Statutes—Recognizances.*

### 3 George IV. c. 39—An Act for preventing Frauds upon Creditors, by secret Warrants of Attorney to confess Judgment. [24th *June* 1822.]

3 G. IV. c. 19.

WHEREAS injustice is frequently done to creditors by secret warrants of attorney to confess Judgments for securing the payment of money; whereby persons in a state of insolvency are enabled to keep up the appearance of being in good circumstances, and the persons holding such warrants of attorney have the power of taking the property of such insolvents in execution at any time, to the exclusion of the rest of their creditors: For remedy whereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That from and after the twenty-ninth day of *September* next, if the holder thereof shall think fit, every warrant of attorney to confess judgment in any personal action, or a true copy thereof, and of the attestation thereof, and the defeasance and indorsements thereon, in case such warrant of attorney shall be given to confess judgment in his Majesty's Court of King's Bench at *Westminster*, or such a true copy thereof as aforesaid, in case such warrant of attorney shall be given to confess judgment in any other Court, shall, within twenty-one days after the execution of such warrant of attorney, be filed, together with an affidavit of the time of the execution thereof, with the clerk of the docquets and judgments in the said Court of King's Bench.

Warrants of attorney in personal actions to be filed within 21 days.

II. And be it further enacted, That from and after the said twenty-ninth day of *September* next, if at any time after the expiration of twenty-one days next after the execution of such warrant of attorney, a commission of bankrupt shall be issued against the person who shall have given such warrant of attorney, under which he shall be duly found and declared a bankrupt, then and in such case, unless such warrant of attorney, or a copy thereof, shall have been filed as aforesaid, within the said space of twenty-one days from the execution thereof, or unless judgment shall have been signed, or execution issued on such warrant of attorney, within the same period, such warrant of attorney, and the judgment and execution thereon shall be deemed fraudulent and void against the assignees under such commission, and such assignees shall be entitled to recover back and receive, for the use of the creditors of such bankrupt at large, all and every the monies levied or effects seized under and by virtue of such judgment and execution.

Where a commission of bankrupt shall issue against the person giving a warrant of attorney, the warrant shall be deemed fraudulent and void, unless the same shall have been filed as before directed.

III. And whereas the object of the said provision may be defeated by any person giving a *cognovit actionem* instead of a warrant of attorney to confess judgment; be it further enacted, That every *cognovit actionem*, given by any defendant in any personal action, in case the action in which such *cognovit actionem* shall be given shall be in the said Court of King's Bench, or a true copy of such *cognovit actionem* in case the action wherein the same is given shall be in any other Court, shall, together with an affidavit of the time of the execution thereof, be filed with the said clerk, in like manner as such warrants of attorney, or copies thereof and affidavits, within the space of twenty-one days after such *cognovit actionem* shall have been executed, otherwise such *cognovit actionem*, and any judgment entered up thereon, and any execution taken out on such judgment, shall be deemed fraudulent and void against the as-

Every cognovit actionem to be filed in like manner, or void against creditors.

3 George IV. c. 39.

signees of the person giving such *cognovit actionem*, under a commission of bankrupt issued against him, after the expiration of the said space of twenty-one days, in like manner as warrants of attorney, and judgments and executions thereon, are deemed and taken to be fraudulent and void by this Act.

Defeasance of every warrant of attorney or cognovit to be written on the same paper.

IV. And be it further enacted, That if such warrant of attorney or cognovit shall be given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper or parchment on which such warrant of attorney, or *cognovit actionem*, shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such warrant of attorney, or *cognovit actionem*, shall be null and void to all intents and purposes.

Officer of Court to keep a book containing particulars of each warrant of attorney and cognovit.

V. And be it further enacted, That the said officer of the said Court of King's Bench shall cause every warrant of attorney and *cognovit actionem* in any personal action, and every copy thereof, filed in his said office, to be numbered, and shall keep a book or books in his said office in which he shall cause to be fairly entered an alphabetical list of every such warrant of attorney or *cognovit*, containing therein the names and additions and descriptions of the respective defendants or persons giving such warrants of attorney or *cognovits*, and also the names, additions, and descriptions of the plaintiff or persons in whose favour the same shall have been given, together with the number and the dates of the execution and filing of the same, or of a copy thereof respectively, and the sums for which judgment is to be entered up, and also the sums which are specified to be paid by the defeasances or conditions in each warrant of attorney or *cognovit actionem*, and the times when the same are thereby made payable according to the form contained in the schedule to this Act; which said book or books, and every warrant of attorney and *cognovit actionem*, or copy thereof, filed in the said office, shall be searched and viewed by all persons at all seasonable times, paying to the officer for every search against one person the sum of sixpence, and no more.

Fee of 1s. for filing warrants of attorney and cognovits.

VI. And be it further enacted, That the said officer shall be entitled to receive, for his trouble in filing and entering such warrant of attorney or cognovit, or a copy thereof as aforesaid, the sum of one shilling, and no more.

Office copies to be given, on paying the usual rates for copies of judgments.

VII. And be it further enacted, That any person shall be entitled to have an office copy of each warrant of attorney or *cognovit actionem*, or of the copy thereof, filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in each of such Courts respectively.

Satisfaction may be entered on warrants of attorney and cognovits.

VIII. And be it further enacted, That it shall be lawful for any of the Judges of the Court in which such warrant of attorney or *cognovit actionem* is given to order a memorandum of satisfaction to be written upon such warrant of attorney, *cognovit actionem*, or copy thereof respectively, as aforesaid, if it shall appear to him that the debt for which such warrant of attorney or *cognovit actionem* is given as a security shall have been satisfied or discharged.

# SCHEDULE.

| NAME, &c. of the Person giving the Warrant of Attorney or Cognovit. | NAME, &c. of Person for whom given. | Whether Warrant of Attorney or Cognovit; and Number. | DATE of Execution. | DATE of Filing. | SUM for which given. | DEFEASANCE. |
|---|---|---|---|---|---|---|
| *A. B.* of Manufacturer. | *C. D.* of Merchant. | Warrant of Attorney. No. 1. | January 1st, 182 | January 10. | £1,[illegible] | To secure £5[illegible], payable, &c. |

THE END OF VOL. III.

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